

**Halliburton Services (Coffeyville, Kansas), a Division of Halliburton Company and International Association of Machinists and Aerospace Workers, AFL-CIO.** Cases 17-CA-9204, 17-CA-9441, 17-CA-9603, and 17-RC-8929

December 16, 1982

## DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On September 4, 1981, Administrative Law Judge Harold A. Kennedy issued the attached Decision in this proceeding. Thereafter, the General Counsel, the Respondent, and the Charging Party filed exceptions and a supporting brief. *Amicus curiae* briefs were also filed by the AFL-CIO; Industrial Union Department, AFL-CIO; International Union of Electrical, Radio and Machine Workers, AFL-CIO; Service Employees International Union of Electrical, Radio and Machine Workers, AFL-CIO; Service Employees International Union, AFL-CIO; United Steelworkers of America, AFL-CIO; and the Chamber of Commerce of the United States of America.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as amplified herein.

Based on various unfair labor practices and objectionable conduct<sup>2</sup> engaged in by the Respondent, the Administrative Law Judge recommended that another election be held at such time and place as the Regional Director deemed appropriate.

The Union argued that the election should be held away from the Employer's premises. The Administrative Law Judge found that his request was not contained in any objection which was before him and that, in any event, that determination was best left to the Regional Director.

The General Counsel states that, while in this case there is no need to hold the election away from the Employer's premises, the Administrative Law Judge should have found: (1) that the Board

has the remedial power to require that an election be held away from the Employer's premises; (2) that the Board, in appropriate cases, should exercise this power; and (3) that the Board should give greater guidance with respect to the locus of elections.

Initially, we find that it is clear under the broad remedial powers contained in Section 10(c) of the Act and our administrative powers to conduct elections under Section 9(c)(1)(A) of the Act,<sup>3</sup> that the Board may designate the site of an election. Nor would we be reluctant to exercise this power in the appropriate case. However, we find nothing in this record, or the briefs, which persuades us to deviate from our longstanding practice that, as a general practice, the selection of the time and place of elections is better left to the discretion of the Regional Director. As the Board found in *Manchester Knitted Fashions, Inc.*:<sup>4</sup>

Those factors which determine where an election may best be held are peculiarly within the Regional Director's knowledge. His close view of the election scene, including the many imponderables which are seldom reflected in a record, is essential to a fair determination of this issue.

Accordingly, we find it unnecessary and unwise to change current standards or procedures.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Halliburton Services, a Division of Halliburton Company, Coffeyville, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

<sup>3</sup> See *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969); "Congress granted the Board a wide discretion to ensure the fair and free choice of bargaining representatives"; *N.L.R.B. v. A. J. Tower Co.*, 329 U.S. 324, 330 (1946), the Board has the duty to establish "the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees."

<sup>4</sup> 108 NLRB 1366 (1954).

## DECISION

### STATEMENT OF CASE

HAROLD A. KENNEDY, Administrative Law Judge: Based on charges filed by International Association of Machinists and Aerospace Workers, AFL-CIO (referred to as the Union and as IAM), the Regional Director for

<sup>1</sup> The General Counsel, the Charging Party, and the *amici* have requested oral argument. Their requests are hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

<sup>2</sup> The facts are fully set forth in the attached Decision and we adopt the Administrative Law Judge's findings and conclusions.

Region 17 of the National Labor Relations Board issued complaints in Cases 17-CA-9204, 17-CA-9441, and 17-CA-9603 charging Halliburton Services (Coffeyville, Kansas), a Division of Halliburton Company, with violating Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act).<sup>1</sup>

Case 17-RC-8929 involves objections filed by the Union with reference to a Board election held on Respondent's premises on January 30, 1980. (The petition for the election was filed on December 3, 1979.) The Union lost the election 154 to 205 (with 1 void ballot and 13 challenged ballots.)

The Union timely filed 26 objections, and the Acting Regional Director, after making an investigation, directed that Objections 1 through 21 be consolidated with Case 17-CA-9441 on the basis that such objections and violations alleged in the two matters "encompass" the same acts and conduct.<sup>2</sup>

The "R" and "CA" matters were consolidated and heard together in Coffeyville, Kansas, July 23-26, September 23-26, and October 28-31, 1980.<sup>3</sup>

### The Charges

The complaint in Case 17-CA-9204, as amended, alleges Respondent violated the Act as follows:

1. Foreman Don Spencer on or about August 2, 1979 (complaint, par. 5):

a. Ordered an employee not to discuss union membership, activities, or sympathies with other employees.

b. Created an impression of surveillance of employees' activities on behalf of the Union.

2. Because of union or other concerted activities engaged in by employees, Respondent (complaint, par. 6):

a. Suspended Sylvester Herring for 3 days on or about September 5, 1979.

b. Issued a written warning to Bobby Clemons on or about September 17, 1979.

c. Discharged Clarence Thomas on or about September 18, 1979.

d. Refused to reinstate Clarence Thomas since on or about September 18, 1979.

Paragraph 7 of such complaint alleges that the conduct referred to in paragraph 1 a and b above constituted violations of Section 8(a)(1). Paragraph 8 of such complaint alleges that the conduct referred to in 1 a-b and 2 a-d involve violations of Section 8(a)(1) and (3).

The complaint in Case 17-CA-9441, as amended, alleges that Respondent violated Section 8(a)(1) in 1979 and 1980 as follows:

a. By directing an employee not to leave his work area without permission in order to restrict the employee's ability to discuss union activities, membership, or sym-

thies. (Allegedly Shop Superintendent Alton Phelps and Line Foremen Wilmer Malotte and Leo Dodson gave such directions in mid-November 1979.)

b. By prohibiting employees from displaying union insignias in their work area. (Line Foremen Malotte and Dodson allegedly engaged in such conduct in August 1979 and September 1979, respectively.)

c. By (Leo Dodson in mid-January 1980) removing and destroying union insignias displayed on employees' personal belongings.

d. By threatening employees with layoffs if they selected the Union as their bargaining representative. (Bruce Frazier, manager of manufacturing, Personnel Manager Jerry Messersmith, and Shop Foreman Leo Carter allegedly made such threats on January 8, 23, and 24, 1980, respectively.)

e. By (Line Foreman Bob Smith) inflicting bodily injury on an employee because of the latter's support of and sympathies for the Union.

f. By (Personnel Manager Jerry Messersmith on January 9, 1980) telling an employee that it would be futile for employees to select the Union as bargaining representative as Respondent did not have to negotiate with the Union.

g. By (Respondent Manager Jerry Messersmith on January 9, 1980) threatening an employee with plant closure if the employee selected the Union as bargaining representative.

h. By (Line Foremen Don Spencer in October 1979) telling an employee not to associate with employee union supporters.

i. By (Line Foreman Bob Smith in late December 1979 or early January) interrogating an employee regarding her and other employees' union membership, activities, and sympathies.

Paragraph 6 of the complaint in Case 17-CA-9441 also alleges violation of Section 8(a)(3) (and Sec. 8(a)(1) as derivative violation) by Respondent taking the following actions against Barbara Moore on January 23, 1980, because of her membership, support, or assistance to the Union or other concerted activities:

a. By issuing a written warning to her.

b. By reducing and delaying a pay raise due her.

c. By failing, since January 23, 1980, to revoke the warning and to grant the wage increase.

Paragraph 5 of the complaint in Case 17-CA-9603 alleges Respondent violated Section 8(a)(3) of the Act (and Sec. 8(a)(1) as derivative violation) on or about March 26, 1980 by:

a. Issuing a written warning to Sylvester Herring.

b. Discharging Herring.

According to the complaint, such acts were engaged in because Herring "joined, supported or assisted the Union, and engaged in concerted activities."

### The Objections

Objections 1 through 21, filed in Case 17-RC-9020 and before me for determination after a hearing thereon, are as follows:

1. On January 21-24 and 30, 1980, the above-named Employer, by its officers, agents, and/or representatives,

<sup>1</sup> The complaint in Case 17-CA-9204, based on a charge filed on September 20, 1979, and an amended charge filed on September 27, 1979, issued on October 26, 1979. The complaint in Case 17-CA-9441, based on a charge filed on February 6, 1980, issued on March 13, 1980. The complaint in Case 17-CA-9603, based on a charge filed on April 18, 1980, issued on June 10, 1980.

<sup>2</sup> The Acting Regional Director in a report dated March 17, 1980, recommended that Objections 22 through 26 be overruled for lack of evidence. The Union requested review of such report by the Board, but it was denied.

<sup>3</sup> Certain errors in the transcripts are hereby noted and corrected.

created acts of surveillance of its employees' union activities.

2. On January 29, 1980, the same Employer, by its officers, agents, and/or representatives, prohibited its employees from passing out union literature on company property during nonworking hours in nonworking areas.

3. The same Employer since on or about December 3, 1979, and continuing to date of election, restricted known union supporters from moving about the Employer's property and allowed known antiunion employees free movement about the plant and aided antiunion employees in their antiunion campaign inside the plant during working hours.

4. The same Employer since on or about December 3, 1979, destroyed union literature and marked it up in front of employees and thereby created an atmosphere of intimidation and coercion.

5. The same Employer since on or about December 3, 1979, prohibited union supporters from talking about the Union in the plant during working hours and disciplined them for such activity which at the same time allowed antiunion employees to talk against the Union during working hours.

6. The same Employer on January 16, 1980, threatened employees with loss of benefits if Union won the election.

7. The same Employer on January 16, 1980, threatened employees with a less favorable layoff and transfer procedure if the Union won the election.

8. The same Employer on or about January 21, 1980, physically assaulted a union supporter while he was handbilling union literature to discourage him from handbilling and his union activities in behalf of the International Association of Machinists and Aerospace Workers, AFL-CIO.

9. On January 29, 1980, in an employee meeting, Bruce Frazier, plant manager, stated he did not know why the Union waited until this late date to go to court about the location of the election and he refused to let a union supporter tell the reason when he requested to do so.

10. In a captive meeting, the Employer stated that the Union would cause trouble, and create violence and mistrust to get benefits the Company could not afford.

11. The Employer stated that the Union would negotiate away benefits the employees now had in order to get a dues-checkoff provision in a labor agreement and the Union would use the checkoff to collect fines and assessments.

12. On January 21, 1980, Foreman Ray Sharp in referring to Harold Armstrong's charge being dismissed by the NLRB told Harold Armstrong when he started a fire he should be able to take the heat and the Union was not standing behind him. This was done in front of other employees and thereby intimidating and coercing the employees.

13. The same Employer on January 9, 1980, told employees the plant would be closed if the Union won the election.

14. The same Employer on or about January 23, 1980, put out a three most-wanted list listing Grand Lodge Representatives Larry Downing and Jim Malott and General Vice President Tom Ducey. The guard showed

the list to employees and told them he was instructed to bring the three in if he found them.

15. The same Employer in the final days of the election gathered together the paint department employees, the sandblast department employees, and the final assembly department employees, and told them not to talk with or have any communication with Sylvester Herring, a known union supporter.

16. The same Employer on January 28-30, 1980, questioned employees on how they were going to vote.

17. The same Employer told employees that Halliburton was so big that it did not have to negotiate with the Union.

18. The same Employer on January 16, 1980, told a union supporter the supporter was blackballed at Halliburton for supporting the Union.

19. The same Employer on or about January 16, 1980, gave Barbara Moore a written warning because of her support of the Union.

20. The same Employer January 23, 1980, refused to give Fred McDaniels a sick leave and told him it may give him a sick leave for the day he missed and would let him know after the union election.

21. The Employer, by the above acts, depleted the Union's majority and a fair election cannot be held and the Union requests a bargaining order.

#### Relief

Counsel for the General Counsel seeks a cease-and-desist order restraining repetition of any violations alleged, a make-whole order, and a direction for a rerun election. The Union, which bears the burden with respect to the objections filed, seeks in addition to a cease-and-desist and make-whole order, a direction for a rerun election off of Respondent's premises. Respondent contends that the alleged unfair labor practices and the Union's objections have not been proven and requests dismissal of the entire proceeding.

Having considered the briefs of the parties and the entire record, I find Respondent violated Section 8(a)(1) of the Act by creating an impression of surveillance of employees' union activities, by threatening employees with layoffs if they selected the Union as their bargaining representative, by interrogating an employee concerning employees' union sympathies, by discriminatorily restricting the display of union insignias in work areas, and by removing union insignias displayed on an employee's personal belongings. An order enjoining such practices will be entered. The other allegations will be dismissed. Objections 1, 3, 5, 7, and 16 were sustained. Objections 2, 4, 6, 8, 9-15, and 17-21 were not sustained and will be overruled. My order will also recommend holding of a new election at a time and place in the discretion of the Regional Director for Region 17.

#### FINDINGS OF FACT

##### I. UNDISPUTED MATTERS

Many issues are not in dispute. Respondent admits the jurisdictional allegations of the complaints.

Respondent is a Delaware corporation engaged in the manufacture of oil field service equipment at its Coffeyville, Kansas, facility. It annually purchases goods and services valued in excess of \$50,000 directly from sources outside of the State of Kansas and is, therefore, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is admittedly a labor organization within the meaning of Section 2(5) of the Act.

The following persons admittedly hold the positions indicated and are supervisors and agents as defined in the Act:

Bruce Frazier, manager of manufacturing  
 Alton Phelps, shop superintendent  
 Jerry Messersmith, personnel manager  
 Bill Williamson, senior production manager  
 George Kindred, shop foreman  
 Leo Carter, shop foreman  
 Ray (Pete) Robnett, shop foreman  
 Wilmer Malotte, line foreman  
 Don Spencer, line foreman  
 Bob Smith, line foreman  
 Leo Dodson, line foreman  
 Marvin Williams, line foreman  
 Ray Quinn, foreman  
 Raymond Sharp, foreman  
 John Boyd, foreman  
 Fred Witner, foreman<sup>4</sup>

The IAM has sought to organize the Halliburton plant in Coffeyville for some time. The IAM has conducted two campaigns to organize the Halliburton plant in Coffeyville. The first campaign began in 1978, and the second began in 1979. The Board conducted an election in October 1978 and a second election on January 30, 1980. The Union lost both elections. The voting at the first election took place in the break or lunchroom, which is marked "1874" on the diagram of Respondent's plant in evidence as the Union Exhibit 1. The second election was held in the electronics assembly area, marked "Elect." on the diagram. The room was sealed off so employees could enter and exit from an alleyway.<sup>5</sup>

## II. THE EVIDENCE

The record in these proceedings is substantial. Over 70 witnesses testified, 24 for the General Counsel, 15 for the Union, and 38 for the Company. Respondent alone of-

fered 88 exhibits. A summary of the important witnesses follows:

*Larry Downing*, a "special representative assigned to organize" for the IAM in the Coffeyville area, testified for the General Counsel that he participated in the two organizing campaigns at the Halliburton plant in Coffeyville. He said he first began in May 1978 and continued until an election was held in October 1978. The second campaign began in the summer of 1979 and ended in January 1980. Downing identified Sylvester Herring, Clarence Thomas, and Bobby Clemmons as active supporters of the Union.

Downing supplied certain statistical information when he was recalled to testify for the Union. He estimated that there were 425 employees at the Halliburton facility in Coffeyville, counting office workers, and that he had talked to about 300 of them. He said the employees, which included about 50 women, were "close knitted" and were well acquainted with each other. Downing said he had also tried to organize other employers in Coffeyville and the area nearby. Downing said Coffeyville had a population of 15,000 and an unemployment rate of 6.4 percent.

A rerun election could be conducted at a number of places near the Halliburton plant but off of its premises, Downing said. He specifically mentioned the City Recreational Building, the Floral Hall, and the Industrial Park area (where a van could be placed). On cross-examination Downing acknowledged that the Union had not filed objections to the 1978 election and that it had proposed that the 1980 election be held in the guard shack "if it couldn't be held off company property." According to Downing, the IAM Local assessed no initiation fees and had only assessed one fine against a member.

*Ray "Pete" Robnett* testified that as a shop foreman he supervises the welding and sheet metal fabrication work of 125-130 Halliburton employees. He said he decided to discharge Clarence Thomas during a meeting with Thomas and other company officials (Alton Phelps, Jerry Messersmith, and Don Spencer) held in the shop superintendent's office on September 18, 1979, the day after Thomas had reportedly thrown a company respirator away. He identified a memorandum prepared by Spencer (G.C. Exh. 2) which indicates that Thomas was discharged for "willful or careless abuse" of company property. Robnett said he did not know of any other instance of willful destruction of company property by an employee. Nor was he aware of any other Halliburton employee being fired for that reason.<sup>6</sup> According to Robnett, Thomas was actually fired for the willful abuse of company property and absences from his work area as indicated in Respondent's Exhibit 1, Thomas' separation report. Robnett said he, Phelps, Messersmith, and Don Smith had reviewed Thomas' personal file, which included a number of unfavorable "EPR" and "AVO" entries, and decided to call Thomas in and ask him about the res-

<sup>4</sup> Near the end of the hearing Bruce Frazier, usually referred to as the "plant manager," testified that he had been transferred to a new facility in Amarillo and that he was being succeeded by Joe Galey, who had been the plant engineer and in charge of the plant's quality control. Bill Williamson, who had been in charge of maintenance and plant engineering under Galey, had also been transferred, Frazier said. Frazier stated that Alton Phelps would continue to be the "No. 2 man" at the Coffeyville plant but would carry a new title, "Assistant Plant Manager." The three shop foreman—Carter, Kindred, and Robnett—work under Phelps, and under them are numerous line foremen. Personnel Manager Messersmith reports "directly to John Birdsong in Oklahoma," Frazier said.

<sup>5</sup> Halliburton Official Frazier testified that the first election was held in the break room at the Union's insistence, but he said it was unsatisfactory because of the noise level and "because of employees getting in the break area to get to the vending machines." Union Organizer Carl Haynes and other witnesses also spoke critically of the break room as a place for an election.

<sup>6</sup> See Respondent's tabulation of instances of damaged property and action taken with respect to each, G.C. Exh. 3. Frazier, Respondent's top official at Coffeyville, testified that Sonny Armstrong, a union activist, had been counseled (and suspended for 3 days once) in connection with damaging company property on four separate occasions.

pirator throwing incident. Robnett said Thomas admitted that he had thrown the respirator and offered no explanation for doing so.<sup>7</sup>

Robnett acknowledged that Thomas had filed a charge alleging Halliburton had terminated him for union activity, but Robnett denied knowing that Thomas was a union supporter while an employee of the Company.<sup>8</sup>

Clarence Thomas testified he went to work at Halliburton on September 21, 1978, and was terminated on September 18, 1979. His last job with the Company was as a "shop blaster" in the paint shop. He said the Company furnished him a respirator because of his sinus condition.

Thomas related that around 6:45 on the morning of September 17, 1979, a fellow worker had told him that the foreman, Don Spencer, had left word that the approximately five shop blasters in his department were to stay in their area and work "through lunch and break" because they were behind in their work. Thomas said he proceeded to the water test department "to discuss the problems" with Sylvester Herring and Sonny (H. R.) Armstrong, whom he identified as union leaders. Thomas said Foreman Spencer approached him after he had talked 5 or 10 minutes with Herring and Armstrong and was told by Spencer to return to his area. Thomas said he did return to his work area and, being upset on learning that he was to work through the lunch and break period, threw his respirator on the floor. Two plastic cones, components of the respirator, fell out and he picked them up, Thomas said. But he allowed the rubber mask part of the respirator to lay on the floor until he left for (a delayed) lunch about 3 hours later. Thomas said he noticed that the mask had been picked up when he returned from lunch. Shortly thereafter, Foreman Spencer inquired of Thomas as to the whereabouts of his respirator, and Thomas replied that he did not know.

Thomas testified that he saw Spencer with the respirator briefly on the following morning, September 18, after Spencer presented "some papers" to him to read. In the afternoon of that day he met with Spencer and other Halliburton officials, Phelps, Robnett, and Messersmith, and learned that he "was being terminated for destroying company property." Thomas recalled that Robnett read to him from some section of the Company's handbook that morning that dealt with destruction of company property.

Thomas said he began attending union meetings around August 1979 and that he had signed a union card on September 12, 1979. He said he would wear a union

cap with "a big I.A.M. emblem" on it and carry union materials back and forth to work in a packet or folder which also had a big IAM emblem on it. Thomas agreed on cross-examination that many others also wore union hats and carried packets of union materials around. Thomas said he used union materials to talk to fellow employees about the Union at the Halliburton plant while on breaks.

Thomas was asked about company policies with respect to employees eating in working areas and being away from their work stations. Thomas indicated that employees were free to get a drink or go to the restroom "on [their] own spare time" without specific permission. He said he and others had eaten snacks in their work area, but he acknowledged that he did not know if his foreman had observed him or not. Employees were to call in, or "somebody" for them, if they could not make their shifts, he said. He said his mother had called in for him a time or two. He acknowledged that he had received six or so warnings or reprimands during his employment at Halliburton.<sup>9</sup>

Bruce Frazier, when called by the General Counsel,<sup>10</sup> testified that he had been manager of manufacturing, the "top person" at the Halliburton facility in Coffeyville, since it had opened 6 years previously. He said the Coffeyville plant employed approximately 470 persons in producing equipment and material for field servicing of the oil industry. Frazier stated that some "sales equipment for field services" is also produced at Coffeyville.

Frazier said he met with nearly all of the facility's employees in a series of meetings in January 1980 to discuss the Company's position with respect to the Board election held on January 30, 1980. He identified a copy of the speech which he delivered on January 8 to the employees as General Counsel's Exhibit 4. He indicated that he did not depart from its text in his appearance before the employees. Frazier said he met and spoke to the remaining employees on January 28. A copy of the January 28 speech was received as the Union's Exhibit 2.<sup>11</sup>

<sup>7</sup> On cross-examination Thomas acknowledged that he had been told to stay in his work area when he started at Halliburton and that he had thereafter received warnings or reprimands for being out of his work area and for absences and tardiness.

Thomas Merritt, a blast partner of Thomas, and Leadman Maxy McKellips testified that Thomas would leave his work area to talk to others. Jerald Kuehn said he found Thomas asleep on the job three times in 1 week and hiding in a tank at another time when he should have been standing guard. Shop Superintendent Phelps testified that he found Thomas with his head down and eyes closed when he should have been observing for his buddy. McKellips also testified that Thomas told him prior to his discharge that "by God" he would not agree to having his breaks rescheduled. Merritt said he saw Thomas throw his respirator against the wall and walk away. Sandblaster William Thompson, another coworker of Thomas, testified that he found the rubber part of a respirator by a "blast" and turned it in to Don Spencer's office. Thompson said he did not know at the time that it was Thomas' respirator but learned later that it was. Another part of the respirator was found some 30 or 35 feet away near the wall, Thompson said. Donna Oestman testified "Lark" Thompson brought part of a respirator into the office one day and that later observed Thomas "talking back" to Don Spencer. As indicated, *infra*, Foreman Spencer investigated the respirator incident and recommended that his superior, Shop Foreman Pete Robnett, terminate Thomas.

<sup>10</sup> Frazier's brief testimony as a defense witness is summarized, *infra*.

<sup>11</sup> Frazier said employees were not allowed to enter into any discussion with him on either date, although Herring tried to do so at the Janu-

*Continued*

<sup>7</sup> Willful or careless abuse of company property was specifically proscribed on penalty of discharge, in the employee's handbook at that time.

AVO, an acronym for "Avoid Verbal Orders," is used to document communications within the Halliburton organization. An EPR, an acronym for "Entry and Personnel Record," is a newer form used for the same purpose. Resp. Exhs. 2-6 and 10 relate to instances when Thomas was reported away from his work area between March 23 and September 10, 1979. Resp. Exh. 7 refers to Thomas being out of his work area and the respirator throwing incident on September 17, 1979. Resp. Exhs. 9 and 11-14 refer to absences or tardiness of Thomas in 1979.

<sup>8</sup> Personnel Manager Messersmith, Shop Superintendent Phelps, and Paint Shop Supervisor Spencer testified that they had seen Thomas wear a red bandana but not a union cap or other insignia. These Halliburton officials said they were present when Robnett told Thomas that he was being discharged for being out of his work area and for destruction of company property.

Frazier said he observed from the guard shack the distribution of union literature on company property at the walkway near the main gate of the plant on an afternoon in January 1980. He said he only passed through the area and denied that anyone was stationed there to observe the distribution.

Frazier referred to the decision to terminate Herring as a joint or team decision. He acknowledged knowing Herring had been a union supporter since the summer of 1978. He said he received a letter from IAM Organizer Downing in May 1979 and was aware that both Herring and H. G. "Sonny" Armstrong had solicited signed authorization cards at the plant during nonworking time in the fall of 1979.

Frazier testified in some detail regarding the termination of Sylvester Herring, whom he referred to as the "worst employee" Halliburton ever had at Coffeyville. Frazier said he had received many complaints from supervisors about Herring. According to Frazier, Herring was initially assigned to work in trailer assembly under Foreman Leo Dodson and was later reassigned to work under Wilmer Malotte in small parts assembly and water test. Frazier was questioned at some length concerning a memorandum he read to Herring between 8:30 and 8:40 a.m. on March 26, 1980, approximately 45 minutes before he was terminated. Frazier said the meeting with Herring ended at 8:40 a.m. and that he decided to fire Herring between 9:20 and 9:30 a.m. after learning from George Kindred, the shop superintendent, that Herring had failed to return to his work area at the end of the morning break.

The memorandum, General Counsel's Exhibit 5, states that Herring had "accumulated a grossly unsatisfactory and unacceptable record" and warned Herring: "You will be discharged the next time you commit any of the infractions listed below, or commit any other act which is contrary to the published Company rules, or which interferes with the performance of your own assigned duties or with the work of other employees." The memorandum lists these 17 categories in which his behavior was said to have been unacceptable:

1. You have refused to perform assigned work.
2. You have left your work area during working time without permission of your supervisor and without any reason related to your work.
3. You have interfered with the work of other employees in other work areas than your own by visiting with them when you were supposed to be working in your own work area.
4. You have refused to conform to instructions that you must sign the entry log when you arrive for work after your scheduled starting time.
5. You have provoked arguments with the plant guard by such devices as refusing to exhibit your I.D. badge and creating a scene at the gate when

the guard would not admit you without showing your badge.

6. You have failed to call your supervisor at the beginning of your shift to report that you would not be at work.

7. You have placed union stickers on Company property after being told not to do so.

8. You have, during working time, engaged in reading printed material unrelated to your work.

9. You have eaten food in the plant during working time instead of your lunch and break periods.

10. You have overstayed break periods instead of returning to work when the break ends.

11. You have demonstrated disrespect for supervision by addressing supervisors with vulgar language.

12. You have been loafing in your work area when there was assigned work to be done.

13. You have been found smoking in no-smoking zones.

14. You have deliberately knocked over trash barrels, scattering the contents, and refused to replace them.

15. Your job performance has been mediocre.

16. Your absences have been excessive.

17. Your tardiness has been excessive.

Frazier said he had prepared the memorandum over a 2-week period after examining Herring's personnel file and conferring with foremen and the Company's legal department. Asked by the General Counsel's attorney to explain the basis of the several items contained in the memo, Frazier testified as follows:

Item 1 was based in part on an AVO dated December 20, 1978, which states that Herring would not enter and work in a tank until Foreman Malotte had spoken to him. Frazier said there were also AVOs indicating that Herring had refused to accompany foremen to discuss matters with another company official.

Item 2 was based on an AVO dated February 9, 1979, a day when Herring was sent home for one day for leaving the Company's premises without permission; on an AVO dated July 10, 1979, reporting that Foreman Malotte had spent "34 minutes" looking for Herring; and an AVO dated September 5, 1979, indicating that Herring was sent home for 3 days for leaving the work area and the main gate.

Item 3 was based on the same information relied on for item 2 except for the AVO dated September 5, 1979.

Item 4 was based on an AVO dated February 17, 1979, reporting that Herring arrived at the plant at 7:21 a.m. but refused to sign the log until 7:40 a.m.; also, a note dated September 5, 1979, reporting that Herring had given the guard a "hard time" about signing the log on a day he went through the gate to turn off his lights.<sup>12</sup>

Item 5 was based on memorandums prepared by Personnel Manager Messersmith on February 18 and 19, 1980. The February 18 memo states that Herring and

ary 28 meeting. (Herring testified he tried to explain the Union's position but was told to "sit down.") Frazier testified that two other Halliburton officials, Personnel Manager Messersmith and Gates McPhail, held meetings with employees in January at which employees were allowed to speak. The officials followed the format set forth in the Union's Exh. 3.

<sup>12</sup> Respondent's handbook requires "registering at the security office" when entering the plant at other than normal work hours.

Fred McDaniel were observed speaking with Security Guard Ron Sweetan and that Herring was upset over having to show his ID badge; also, that Herring was told by Messersmith to leave his green system or terminal badge (which had an IAM sticker attached to it) at the system machine in the plant and not carry it around in his billfold as he had been doing. The February 19 memorandum reported that Herring and McDaniel had complained of being singled out and harassed by a security guard about showing their ID badges and that Herring threatened to "file charges" and punch the guard.

Item 6 was based, in part, on an EPR memorandum dated January 7, 1980, reporting Herring's failure to call on January 4 and 5. (The EPR also notes that Herring's terminal badge had still not been turned in.) There were also memos reporting late calls for absences on February 21 and March 4, 1980.

Item 7 was based in part on an incident that occurred on August 23, 1980. Supervisor Malotte reported in an AVO of that date that he reached for Herring's badge to remove the IAM sticker from it and that Herring then grabbed Malotte's wrist and took the badge back. Malotte directed Herring to report to Pete Robnett's office but Herring refused. (Herring was sent home on August 3 over this altercation but was later paid for the day on the basis that both Malotte and Herring were "in the wrong.") Frazier thought there were other incidents involving Herring's placing of union stickers on company property but the only other instance he could find of record was referred to in the February 18, 1980, memo of Jerry Messersmith (see item 5, *supra*) which noted that Herring's terminal badge had an IAM sticker on it and should not be taken home. According to Frazier, employees could place union stickers on their personal toolboxes or lunchboxes but that no stickers were to be placed on company toolboxes or cribs used by employees. Frazier said that "[p]erhaps calendars, something that would be of substance" would be allowed on company property "but we would not normally allow any other type of stickers."

Item 8 was based on an AVO indicating that Herring and another employee were seen reading and discussing a "Union Committee book" between 9:25 and 9:40 a.m. on January 20, 1980. Frazier said there are slack periods on occasions, but, according to Frazier, employees could read such things as blueprints and their handbook at such times. Employees are not to be reading, he said, when there is work to do.

Item 9 was based on oral reports of Foreman Malotte. Frazier said, that Herring had been seen eating "outside his lunch break or coffee break." Frazier denied it was a common practice for employees to have a candy bar or coke while working.

Item 10 was based on the report of Herring's supervisor that it was Herring's practice to go to a different building from his own for breaks and then to extend the periods.

Item 11 was based on incidents occurring on February 15 and March 20, 1980. On February 15 Herring reportedly used obscene language in discussing an adjustment raise with Shop Foreman Kindred. On March 20 Herring reportedly told Kindred "to go f— himself" after

being told to go back to work. Herring then refused to go to shop superintendent's office as requested by Kindred.

Item 12 was based, Frazier said, on seeing Herring on February 17, 1980, sit while in his work area. Frazier said he "assumed that he had work to do."

Item 13 was based, Frazier said, on his recollection of seeing Herring smoke in a "no smoking" area in January 1980. Herring was in the "paint line" and there were, Frazier said, "no smoking" signs at each end of the line.

Item 14 was based on an AVO written by security guard Sweetan on January 29, 1980, wherein it was stated that Herring knocked over a trash can or cans and refused to pick up the contents. Frazier recalled union literature was being distributed at or about that time.

Item 15 was based on Herring's "Authorization for Change in Pay Status or Employee Rating Grade" (G.C. Exh. 6), which, according to Frazier, indicated Herring's job performance to be "mediocre." Frazier agreed, however, that the form, dated October 4, 1979, indicated Herring had performed satisfactorily in all areas except attendance. Frazier said his work performance deteriorated after that date.

Item 16 was based on sick leave and voluntary time off as shown by Herring's attendance record, Frazier said.<sup>13</sup>

Item 17 was based on "guard's entry log showing when employees are tardy," Frazier stated.

Sylvester Herring testified that he was employed at the Halliburton plant in Coffeyville between January 10, 1977, and March 26, 1980. His hours at the plant were from 6:45 a.m. to 3:15 p.m.

Herring stated that he was originally assigned to work under Foreman Leo Dodson whom Herring regarded as unfair. According to Herring, Dodson gave him a 15-cent raise at a time when he gave newer, less-experienced employees raises of 30 or 40 cents. Herring asserted that Dodson "bird dogged" him because of his union activities. Herring stated in November 1978, a month or so after the first election was held, he met with Halliburton officials Bruce Frazier, Alton Phelps, Leo Carter, and Jerry Messersmith. According to Herring, Frazier suggested at that time that Herring quit his union activities and became a "good employee." Herring said he replied that he "would continue to shout for the union" because of the unfair treatment he was receiving. Phelps told Herring during this meeting that he was being transferred to work in final tank assembly under Wilmer Malotte because of the apparent "personal conflict" between him and Dodson. Herring protested the change and insisted that the transfer be reduced to writing.<sup>14</sup>

Herring said he participated in the 1978 and the 1979-80 IAM organizing campaigns at the Coffeyville Halliburton plant. He said he wore union insignias, solicited

<sup>13</sup> Frazier, as well as other company officers, testified that illness and voluntary time off delay pay increases.

<sup>14</sup> Herring testified that in November 1978 a number of employees working under Dodson drew up a petition to get Dodson transferred to another department. Herring said he had been transferred twice at the Halliburton plant against his will: from trailer assembly to tank assembly and from tank assembly to water test.

signed authorization cards from employees, and was on the organizing committee during both campaigns.

Herring maintained that he was singled out and harassed by Halliburton officials because of his union activities. He asserted that other employees could leave their work areas without special permission but he was not able to do so. He said his duties in water test required him to leave the work area to secure a part or the assistance of an inspector or a welder, but when he did so officials would question his being out of his work area. Herring conceded on cross-examination, however, that the "normal procedure" was to use a telephone in locating an inspector or welder. Herring also acknowledged that he chose to take breaks in "C" area which was a considerable distance (250 feet or so he thought) from area "B" where his water test work station was located, and that he would not start his return to work until after the buzzer or whistle sounded again. (See the diagram of the Halliburton plant, the Union's Exh. 1.)

Herring stated that in March 1979 Malotte sought to give him an AVO for being in Don Spencer's area, although he was there because Herman Newton had directed him to go pick up some parts. Newton was apparently successful in canceling the AVO and told Herring, according to Herring, "Sylvester, can't you see that Mr. Malotte is trying to set you up."<sup>15</sup>

Herring testified that on January 9, 1980, Jerry Messersmith, the plant personnel manager, told him that he did not give a "damn" if the Union got in or not because the Company would not have to negotiate as it could close or move.

According to Herring, on a day in July or August 1979 (later fixed as July 10, Resp. Exh. 16), he was questioned about being out of his work area during a meeting with Halliburton officials Bill Williamson, Alton Phelps, Leo Dodson, and Wilmer Malotte in Don Spencer's office. While asserting that he was "the only one being picked on," Herring indicated that he offered to remain in his own area unless specifically directed to leave by his foreman. This arrangement was put into effect and thereafter Herring would ask for and obtain an AVO form whenever he wanted to leave his work area. In September and October 1979 a number of AVO were issued to authorize Herring to do such things as visit the nurse or buy cigarettes. According to Herring, the giving of AVOs to him "eased up" in October after the election was postponed when he said he was told that he no longer needed AVOs for permission to leave his work area.<sup>16</sup>

<sup>15</sup> Newton later denied making such a statement to Herring. Herring also said Don Spencer had told him in August 1979 that he was being watched by "High Pockets" Malotte and others. Don Spencer denied making such a statement. Herring maintained that a group of employees known as "Employees for the Employees" were able to move about the plant on worktime during the second election campaign without any restriction.

<sup>16</sup> Herring explained that not all AVOs were used in issuing warnings. Herring said he understood Halliburton's disciplinary procedures to be as follows: For the first offense, the employee would be called to the office and be given an AVO warning. For the second offense, an AVO warning would be issued with a 1-day suspension. For a third offense, an AVO warning with a 3-day suspension would be issued. "I think after that they put a probation and after that they terminate you or something to that effect," he said. Herring said he had received 1- and 2-day suspensions

On direct examination by the General Counsel, Herring undertook to respond to the 17 items listed in Frazier's March 26, 1980, memorandum.

Herring claimed he never refused to perform assigned work as item 1 states. He referred to an incident occurring around April or May 1979 which he said was "questionable" but not a refusal. Herring said he had got into a damaged horizontal tank, where it was hot and short of air, and "padded" it as requested by Herman Newton. When he was finished, Newton directed him to get into another tank and pad it. Herring thought it unfair because Newton was allowing "his little pets to stand around and watch" Herring do the work. Herring said he told Newton, "I did my work," and Newton then called for Foreman Malotte who, after consulting with Leo Carter, wrote Herring up on an AVO. Herring said he refused to accept the AVO and that he was then called into Leo Carter's office. Herring indicated that he then "explained the unfair treatment that Wilmer was imposing on me and what Herman was doing riding me and making me perform more duties."

Herring stated, contrary to what is indicated in item 2, that he could not recall leaving his work for any reason unrelated to his work without permission of his supervisor. But Herring acknowledged that he did meet with Bill Williamson and other Halliburton officials on July 10, 1979, about leaving his work area without permission of his foreman.

Herring also told of the "car lights" incident which had occurred on September 5, 1979. He claimed that he did not leave his work area that day because he had not reached it when he remembered en route (at point "A" on the Union's Exh. 1) to his work area to go back to the parking lot and turn off his lights. Herring said he arrived at the gate that morning at 6:40 and undertook to clock in at that time but that the guard on duty, Sergeant Hamilton Moore, erased it and entered on the log "6:50 a.m.," contrary to the time indicated on the clock on the wall. The log (Resp. Exh. 17) indicates that Herring went out the gate at 7:07 and returned again at 7:11. Herring indicated that it would have taken about 2 minutes to walk to his car and another 2 minutes to walk back into the plant, but he denied the correctness of the Company's log.<sup>17</sup>

Herring also denied leaving his work area and visiting with other employees during worktime as item 3 states, even though, according to Herring, other employees did so.

and had also been placed on a 90-day probation period. He had testified earlier that a 1-day suspension and a 90-day probation that arose out of an incident which occurred on February 9, 1980, had been deleted from his file as part of a settlement agreement. He stated that on that date he had borrowed battery cables at the Halliburton plant to restart his car and was given a "rough time" by Sergeant Moore when he sought to reenter the plant to work. Later that day he met with Halliburton officials, including Malotte, Carter, Phelps, and Frazier. Herring said he brought Herman Newton along as a witness but that Newton was "excused" when he suggested that employees should be told what the rules were.

<sup>17</sup> I reject Herring's testimony concerning this incident. The original log indicates that employees arriving earlier than Herring were clocked in at 6:45.



With respect to item 4, Herring stated that there was no rule "until lately" which required late employees to sign a log. Initially he claimed that the rule was put into effect "because of me" but later indicated he did not know whether the rule had been in effect from the beginning or not. He acknowledged that he refused to sign the log on February 8, 1979, for being 2 minutes late ("I was on time . . . by my time clock," he said) but did sign for being late on July 26, 1979.

With respect to items 5 and 14, Herring claimed he never argued with a guard but conceded that he had turned over two barrels which he said had been "put in our way" near the gate to collect union handbills during the election campaign. He denied dumping any trash or paper but acknowledged that he refused to set the barrels back over again as requested by guard Sweetan. Herring said he asked the guard at the time why he was "taking the company side" and threatened to file charges against him for interfering with the handbilling. Herring claimed he was singled out for special checking of his ID badge, which he kept in his possession. He claimed it was a general practice to check "some employees" but not others.<sup>18</sup>

With respect to item 6, Herring said he did not call in at the beginning of the shift on a special Saturday workday in 1978 (when he said he was not required to do so) but that he did so when he visited the doctor in January and March 1980. He said he was off 3 days in each of these 2 months and called in except for the third day off on March 5. On cross-examination, however, Herring agreed that there was an occasion when he did not call in until after 11 a.m.

As for item 7, Herring said he had placed union stickers on the company bulletin board (which he said Respondent allowed) and on the toolbox, locker, and ID badge the Company had provided him. He related that on August 23, 1979, "Mr. Malotte broke out running taking stickers off the wall and off of the tool boxes" while "everybody was laughing at him." Herring said Malotte reached for Herring's badge and stated, "I want that union sticker off that badge." Herring said he grabbed Malotte's arm to retain his badge and used it to clock in. Herring said he told Malotte the badge was his property and put it in his pocket.<sup>19</sup> Herring stated on direct that he had not been asked to remove union stickers from company property and had not refused to do so. He said he had observed nude pictures, "anti-slogan stickers, union stickers and certain other material" on lockers. According to Herring, the pictures of girls and antiunion stickers were allowed to remain.

Responding to item 8, Herring said there was no policy against reading during worktime and that he as well as others did so while "waiting on work to be brought into the area" without even being reprimanded

for it. He recalled that he had read newspapers, union literature, and a layman's guide on labor relations issued by the NLRB.

Commenting on item 9, Herring testified that he and others, including his foreman, ate food during worktime without ever being reprimanded for it. He said he would drink coffee and eat sandwiches, apples, donuts, and cornflakes.

With respect to item 10, Herring testified on direct that the only time he was ever disciplined for overstaying his break period was on the day he was fired. On cross-examination, he conceded that he had been late in getting back to his work area. Herring indicated that he would not return to work at the end of a break until the whistle blew.

Herring said he used rough language as others did in the work area but denied using vulgar language in addressing supervisors as item 11 states. He acknowledged using vulgar language in telling George Kindred that he was "tired of the company f—ing" with his wages and pay, but said he did not tell Kindred, "Go F— yourself."

Herring said he and Sonny Armstrong worked fast and could assemble five tanks a day on the average while working in water test, but he said there was slack time every day when there was nothing to do. Herring agreed that Alton Phelps had spoken to him about "standing around," as item 12 indicates, but he said he explained to Phelps that there were times when he would have to wait for tanks to be brought in.

Responding to item 13, Herring recalled that Bruce Frazier did observe him smoking a cigarette while he stood on a ladder and placed a hose on a tank. According to Herring, there were no signs in the area, and others would smoke in the area. Herring said Foreman Malotte told him not to worry about it, even though Frazier stated at the time he was going to tell the foreman that he could be fired for smoking in the area.

Herring said he considered his work satisfactory and that he had never been told his job performance was mediocre or unsatisfactory as indicated in item 15.

Herring was also asked whether he was excessively absent or tardy as items 16 and 17 state. On direct he said he had been off work due to injuries in July 1979 and February 1980 but never counseled about his attendance. He also stated on direct that he was written up for being tardy on February 8, 1979. He said he objected to it because two other late arriving workers were not. He agreed on cross-examination that he had been told that his tardiness and absences were excessive.

Herring gave this account of his termination on March 26, 1980. Herring said he met with Halliburton officials George Kindred, Alton Phelps, Wilmer Malotte, and Bruce Frazier in Frazier's office around 8:35 a.m. Frazier handed Herring a copy of Frazier's March 26 memorandum (G.C. Exh. 5) and proceeded to read it aloud. Herring said he asked to comment on each item but was told by Frazier:

No, Sylvester, you are excused. And if you break one of those infractions, you will be terminated.

<sup>18</sup> Here again I do not credit this testimony of Herring. The record indicates that persons who were either late or failed to exhibit their ID badges were required to sign in when entering the plant.

<sup>19</sup> Herring met with Pete Robnett later and was sent home "for the rest of the day." However he was paid for the time off. He was told the next day by Robnett that the Company had investigated the matter and that it had been determined that both Malotte and Herring were in the wrong. Herring said Robnett asked him to take the union sticker off the badge, and he then did so.

Herring said he was able to make two statements to Frazier and Phelps before leaving the office. One asked whether this is "like Russia" and the other made inquiry about "workman's comp money" which Herring thought was due him. Herring said he proceeded to the trailer assembly, where he usually took his break, to see Sonny Armstrong and Fred McDaniel. He said the 9 o'clock whistle had blown before he left the office and the 9:10 whistle blew, announcing the end of the break, "about a minute" after he arrived at the trailer assembly. He said he told Armstrong and McDaniel that "they are trying to fire me" and that he handed Armstrong the Frazier memorandum to read as he and Armstrong "proceeded up to [Armstrong's] area." Herring said he was still on his break (as the start of his break had been delayed by the meeting in Frazier's office) and that he told Armstrong that he was going to have a sandwich. He said he encountered some other employees as he entered his own area and mentioned to them, in response to an inquiry about the meeting he had attended, that he was still being harassed. He said he saw Kindred and Carter at the time and that he arrived in his own work area at 9:15 or 9:17. Herring said he got himself a cup of coffee (at which time he noticed foremen in the area) and proceeded to the assembling of tanks. Herring said he then decided to contact Malotte and take a half a day of vacation because it looked "like they were trying to set something up." He saw Malotte but did not get a chance to ask for the time off. He said he was called into Don Spencer's office and was told by Kindred, after being reminded of the earlier meeting that morning when the memorandum was read to him, that he was being terminated "as of now." Herring said Kindred told him he had broken one of the "infractions" but would not say which one. Malotte, who was present at the meeting, smiled, Herring said, and told him to surrender the "insurance badge" and leave the grounds.

Herring said he told Kindred "you're kidding" and returned to his work area to finish a tank. Phelps, Kindred, and Malotte came to his work area and Herring was told again that he had been fired. Herring said he cleaned out his locker and, after stating that he had been harassed and unfairly treated, left the plant at or about 11:25 a.m.

Herring claimed he did not know why the Company terminated him until after he received a copy of the response the Company sent to the State of Kansas Employment Security Commission.<sup>20</sup>

Mary Kay Luke, who said her job title was shop helper but that she did welding at the Halliburton plant, testified she asked Shop Foreman Leo Carter why the Company was against the Union at a meeting held on January 24, 1980. She said his response was:

Well, he told me that the union was for the people and not for the company, that it would help the people and that the examples that he gave would be

like say, we have our skills as a special person, like a welder and an assembly worker and it would keep them from getting infringed upon and if we're short in one area, then they could not transfer us to a different area to work because that would be infringement on our rights.

And he said they would probably just lay us off instead.

Luke also recalled questions were asked—whether there would be rules about smoking and wearing of protective clothing, "just little things like this" in case of unionization. Luke was asked on cross-examination whether in answering her question Carter had mentioned that there would be a contract with the Union. She said she did not recall but thought he may have told "one of the other girls" who asked a question that an issue (safety shoes) could be negotiated in a contract.

Daniel Ray Webber, who said he was a "floor walker" and supervised eight painters, a similar number of "shot blasters," and a floor sweeper under Foreman Don Spencer, testified that in 1979 Spencer told him that another foreman had been in his office and had related "that it didn't look right for someone walking the floor to be seen talking with Sylvester Herring." Webber said he did not know why his foreman told him he should not talk to Herring: "he just said . . . it didn't look right for me being in the position of a floor walker talking with Sylvester." Walker stated that in his 3 years at Halliburton he had been free to move around and do such things as get a drink or use the bathroom (which he could do in his own area), but he thought employees in some other departments could not. He said employees in his department could eat snacks during worktime but he would not do so while painting. Webber also stated that if he were busy when the regular break buzzer sounded he was free to take his break at a later time without special permission.

Bobby Gene Clemons, Jr., who worked in water test and as an organizer for the Union beginning in August 1979, identified an AVO dated September 17, 1979, which was issued by Wilmer Malotte and stated in part:

Bobby's wife called in 9-14-79 said they were going out of town on business. I was unable to get Bobby on the phone.

The AVO also states that Clemons had not made advance plans to be off and that he had "done this to Don Spencer earlier this year." The AVO indicates that a 1-day suspension would result "if it happens again." Clemons said he missed work because he had gone to Arkansas and he agreed ("Yes, I guess") on cross-examination that Malotte had told him orally that "when you wanted to miss work to go out of town, you should make advance plans . . . instead of calling in on the same day." Clemons had indicated on direct, however, that Malotte's oral message was that he was being cited because his wife—not he—had called in for him. On redirect Clemons said he could "not quite remember what"

<sup>20</sup> The Company reported that Herring was discharged "due to misconduct and violation of company rules, including refusal to obey orders, wasting time, loitering, late return to work area at end of break period immediately after final warning." Herring's interrogation of Kindred at the hearing held on Herring's unemployment claim indicates he was aware that he was fired for being away from his work area, but the transcript of the hearing is not clearly reported.

he and Malotte had talked about on Monday, September 17, after being out of town.<sup>21</sup>

*Vernon Stout* testified he worked as an inspector at Halliburton and moved around the plant to perform his job. He usually proceeded to a particular area on being paged by a person who "dials direct on the P.A. system."

Stout said he knew of no policy which prohibited employees from leaving their work area to go to the bathroom or to talk to others (on business) during worktime and he often saw employees drink cokes or eat snacks, such as sunflower seeds, in work areas. Employees could smoke in the plant, he said, except where restricted, the paint shop being the "main" no-smoking area. His wife had called in to report he could not make his shift, he thought, four or five times.

Stout said he and three others passed out handbills for the Union on company property at the plant entrance between 6 and 6:40 a.m. during the last week of January 1980, just before the election on January 30. He said Pete Robnett sat in the guard shack, probably 15 or 20 feet away, for about 4 days, Monday, Tuesday, Wednesday, and Thursday, and watched the handbilling.

Stout stated that he observed union stickers displayed on inside doors of toolboxes or lockers in December 1979 and January 1980. There were also company "love it or leave it" stickers displayed he said. He could not recall anyone removing any of the stickers.

*Robert Barnett*, a production helper for Halliburton, said he witnessed an event involving Malotte and Herring in August 1979, which he described as follows:

Wilmer came over that way and was pulling union IAM sticker badges off of a box that we keep our folders on and then he started to the time clock, which Sylvester Herring started towards, and they both reached for Sylvester's badge to punch in on the clock, and Sylvester got the badge. Wilmer told Sylvester to give him the badge, that he wanted it and told him to give it to the office with him. And Sylvester said no, he'd done nothing wrong, that he was going to punch and go on back to work. And Wilmer started to arguing and Wilmer got right upon him and started poking his finger in his face and words went between them. And Wilmer grabbed him by the arm and told him to go to the office with him and see Pete Robnett and Sylvester said no, that he hadn't done anything wrong and he was going to punch on and go back to work. If he wanted his badge he could have it after he punched on.

On cross-examination Barnett agreed that a union sticker had been placed on Herring's badge and that Herring refused to surrender the badge and accompany Malotte to the office as requested.

<sup>21</sup> Clemons agreed that he had gone out of town earlier in the year on a Sunday, due to an emergency, he said, and had called in on Monday. He said he did not remember if Spencer had written up an AVO with regard to that incident or whether he had talked to Spencer about it. Clemons' wife, Denise, testified she called Malotte on September 14, 1979, to advise that her husband would not be in that day and that she had done so many times before.

Barnett initially stated that "[e]verybody usually just went wherever they wanted to" until around the end of 1979 when he said a new rule was put into effect that the employees were to stay in their work area unless it was breaktime. He said the rule was enforced against Herring once or twice but no one else. Barnett had indicated in his affidavit, however, that the rule had been put into effect around March 1979 and he agreed on cross-examination that an employee was always expected to stay in his work area to do his work except when he had to go elsewhere "to find shelf folders and get parts, and such things as that."

Barnett said he took breaks at times other than the regular breaktimes without getting special permission if the work required it (as when "in the middle of a paint job"). If on a regular break, the employee is "to go to work when the buzzer stops."

With respect to eating while working, Barnett testified:

I don't know about all shops, but in our area, we are allowed to go over and get a candy bar or a can of pop, or something like that, while we are waiting on a job, or we're waiting for our paint to dry because it takes so long for the paint to dry.

Barnett said he also had read "several times" during worktime. As for calling in to take time off, Barnett said an employee, or someone for him, should call in "as early as possible." For personal business, he said, the employee would be expected to make arrangements in advance.

*Barbara Steward*, a painter of small parts, testified that Don Spencer had told her one morning around December 1979 that he wished she "wouldn't stand around and talk to Sylvester Herring." She said the foreman's statement had no effect on her talking to Herring and that she told Spencer that talking to Herring "didn't mean we were talking about union."

Steward said she understood she was to notify the Company if she could not make a shift and that her husband had called in for her about 20 times. She did not consider it necessary to make arrangements ahead of time to take time off for personal business. Steward stated that she was free to go to the bathroom during worktime and that she could take her break later than the time designated without special permission if "we had to have some work we wanted to finish."<sup>22</sup>

*Robert Lendall* testified that he worked in electronic trailer assembly under Leo Dodson. Lendall said he was a member of the Union's organizing committee and that he had handbilled during January 1980 at the plant site near the guard shack early in the morning and in his work area during breaktime. Lendall stated that in the mornings Pete Robnett would sit in the guard shack and watch arriving employees take the handbills.

Lendall testified that he was "bird-dogged" (which occurs, he said, "when someone is continuously watching you or behind you while you're working") by Dodson in January 1980 up "until about two days before

<sup>22</sup> Stewart showed hostility toward the Company. She said her husband had been fired by the Company 2 years or more earlier.

the election." He asserted that Sue Hickman, however, was not bothered and was left free to talk to employees against the Union.

Lendall said he had purchased his own toolbox and would put union stickers on it almost every day because "they'd be off the box" in the morning when he would arrive. He said one afternoon he saw Dodson taking stickers off of his box. Some toolboxes displayed union stickers, he said, while others had displayed nonunion stickers on them.

Lendall said company policy required an employee to call in before the shift starts. He said his wife had called in seven or eight times for him, and no one ever complained that she had called for him.<sup>23</sup>

Harold "Sonny" Armstrong testified he was currently assigned to work in "sheet metal" and had worked for Halliburton for 4-1/2 years.

Armstrong recalled that Herring came to the truck assembly area (marked "C" on Union's Exh. 1) where he was taking his break, about six or seven minutes after 9 a.m. on March 26, 1980, the day Herring was discharged. He said they both moved toward their work areas after the whistle blew ending the break period, the time, he said, when employees ordinarily leave their break area.

According to Armstrong, an employee was free to take a later break on his own if a meeting or his job had "held [him] up." Employees in all departments, he said, ate snacks in working areas during working time, and they could smoke anywhere except in the paint shop. Also, Armstrong stated that employees were free to move around the plant during working time to talk or visit, get a drink, and use the bathroom. He understood employees were to call in if unable to report for their shift, but others could make the call for them.

Armstrong has been an active union supporter since 1978. He was a member of the organizing committee, wore union insignias, solicited memberships, and passed out union literature. He stated that he handbilled for the Union in 1978 at a highway entrance to the plant and at the guard gate in 1980. He testified that Pete Robnett sat in the guard office and watched the handbilling three or four mornings between January 21 and 24, 1980, and that Jerry Messersmith watched the handbilling there on January 30, election day. Armstrong said he did not do any handbilling on Friday, January 25, and that Robnett told him that day he knew it. Said Armstrong:

Approximately around noon, Pete Robnett came up to me in my work area and asked me where I had been that morning, that he came out early to watch us and we were not there handbilling.

<sup>23</sup> Lendall was also called by the Union and repeated some of his testimony. He stated that he attended a company meeting in January 1980 at which Frazier related that the union was "strike happy." Lendall said he was nervous that month and kept "right on my toes" so he would not be fired. Lendall described the areas where the elections were held in 1978 (in the lunch area where he said foremen came and went) and in 1980 (the electronics assembly room close to where he thought management offices were). He said there was a "general rumor" that the Company had the electronic assembly room under closed-circuit TV surveillance at the time of the 1980 election. He said he did not believe the rumor but "was a little apprehensive" at the time.

Armstrong stated that during the period between October 1979 and the end of January 1980 he was a forklift driver, which required him to travel all over the plant. Even so, he said Foreman Ray Tharp would often tell him during this period to return to his own "waiting area." No other such drivers were so restricted, he said.<sup>24</sup>

Armstrong also testified that "Halliburton, Love It or Leave It" stickers and prounion stickers were displayed on the inside (i.e., lids) and outside of lockers at the plant in late 1979 and early 1980. He said the company stickers were allowed to remain on the lockers.

Everett "Ed" Jones, a helper on the 500-ton brake at Halliburton, testified, as others did, about taking breaks without permission at other than the designated times, the time when designated breaks would end (after the bell or buzzer sounded, he said), the call-in policy for taking time off, the policy with respect to smoking in the paint shop (permitted except in the paint shop, although he maintained everybody did it there too), eating during worktime in working areas (snacks were permitted, he said) and reading on the job (while waiting for work to arrive). Jones indicated that he had left his work area during worktime for personal reasons and that he had been told to return to his work area once or twice.

Jones testified that while handbilling with Carl Haynes, around 3 p.m. or later on an afternoon in January 1980 at the main gate near the guard office, Supervisor Bob Smith approached Haynes from behind and, after grabbing him by the neck, said: "We do not need any of this union garbage out here." Jones said Smith's wife, who also worked for Halliburton, had been with Jones and a guard in the guardhouse.<sup>25</sup>

Jones also testified that he had observed other supervisors, including Messersmith, Frazier, and Joe Galey in the guardhouse during the handbilling. Jones also testified that another supervisor, Lewis Amann, marked up one of the Union's handbills by "marking out stuff and then adding like, do you need union bosses, and stuff like that."

David New, who has worked for Halliburton for more than 5 years, testified that he could "do as I please as far as break, or restroom, drinks, first aid, I have never had

<sup>24</sup> Armstrong had three accidents with the forklift in 1980 (G.C. Exh. 3) and, after serving a 5-day suspension in April of that year, was transferred to work elsewhere. Armstrong filed numerous charges with the Board through the Union against the Company. One charge, which challenged an AVO issued to him on June 2, 1978, was settled favorably to him in part but not that portion of the AVO which stated that he had "tried to remove from plant a piece of material . . . by rolling this item inside items he had permission to remove from plant."

Armstrong said Sharp engaged him in conversation about one charge filed on his behalf that was dismissed: "He asked me . . . if I was able to build the fire and to stand the heat."

<sup>25</sup> Jones stated in his affidavit that he recalled there were four or so persons in the area at the time, but he conceded on cross-examination that normally it would have been very crowded at that time of day. Jones also testified that the "3 most wanted" at Halliburton came through the gate. The three persons referred to, Jones said, were Union Representatives Larry Downing, Jim Mallotte, and Tom Ducey. Personnel Manager Messersmith testified that in November 1979 he sent an AVO to the security guard asking that he be informed when these three union officials came to the plant, but he did not refer to them as being on a "most wanted list."

any restrictions put on me about it." He said employees "quite frequently" visit or talk in working areas during worktime. A buzzer announces the beginning and end of designated break periods, he said. New said that eating in work areas during worktime was generally not allowed, although he conceded he and others had eaten candy bars or had cokes on the job. New stated that during the last organizing campaign he had observed prounion and procompany stickers on toolboxes and in fact admitted placing a union sticker on the company box assigned to him. New indicated that he had observed union stickers on many toolboxes (approximately 100) but only for a short time. There were fewer (25 to 30) prounion stickers on toolboxes, he said, but they "didn't show up" until late and were allowed to remain until 2 weeks before the election. New said he had been suspended and placed on probation for a year for being involved in a "physical altercation with a line foreman."

*Carl Robert Haynes*, a general welder on the swing shift, testified about handbilling with Ed Jones on January 21, 1980. He stated that at 3:15 to 3:25 p.m. Bob Smith came out of the guard shack, grabbed him by the neck, bent him over, and asked, "What the hell are you doing?" Haynes stated that after he responded, Smith walked off and said, "We don't need any more of that union trash around here." Haynes testified that 20 or more were in the area when this incident occurred (although he had stated in his affidavit that the number was around 50).

Haynes testified that while handbilling at the main gate he was observed by management personnel, including Bruce Frazier, Pete Robnett, Joe Galey, and Jerry Messersmith. He said he had noticed a couple of the men take notes with a pad.<sup>26</sup>

Haynes also testified that employees were not supposed to eat food during working hours but that everybody did so. He said he had seen no-smoking signs in the paint shop but that employees, including himself, smoked there anyway.

Haynes stated that he had seen union and company stickers on different things and that he knew no rule against it. Haynes said he had placed union stickers on his toolbox, but someone would remove them when he was not around. Haynes testified that he was an active union supporter and that his foreman, Gerry Hire, told him to stay in his own area during the organizing campaign. He stated that no action was taken to prevent a company supporter, Steve Montgomery, from talking to employees about voting against the Union.<sup>27</sup>

Testifying later for the Union, Haynes said that during the organizing campaign that preceded the January 1980 election Supervisor Pete Robnett would not let him "use the phone whenever I wanted to like we used to be able to." On cross-examination, however, he acknowledged that he had once made an unauthorized long distance

<sup>26</sup> Haynes' testimony concerning the surveillance of the handbilling was somewhat weakened on cross-examination. Bob Smith, who appeared later and denied grabbing Haynes, testified that a shop foreman or Messersmith would usually be in the guard office during shift changes. Frazier and Galey might also be there, he said.

<sup>27</sup> Gerry Hire persuasively contradicted Haynes' testimony that Montgomery was more favorably treated.

telephone call on the company telephone and that there had been discussions about that. Also, he acknowledged talking to employees about the Union on worktime. Haynes stated that he was a member of the Union's organizing committee and was known as an active union supporter. "I felt like the company was very hostile toward myself and the other organizers and . . . I worried about my job quite a bit," he said. He conceded on cross-examination, however, that as far as he knew, all of the Union's 40 or so organizers were still employed at Halliburton at the time of the hearing except for Herring, Thomas, and Linda King. He also agreed that he had been restricted to his work area only during worktime and not from getting a drink or using the restroom. He maintained, however, that there were other employees who were allowed to go to first aid "or whatever they needed to do" during worktime during the organizing campaign.

Haynes stated that Frazier's remarks to employees in January 1980 had made him feel that workers would lose benefits if they voted for the Union. Frazier indicated, Haynes said, that the Company would have to lay off employees in slack time rather than transfer them around as they had in the past.<sup>28</sup>

Haynes said he recalled that management personnel were outside of the lunchroom when employees voted there in the 1978 election. He testified that he thought the electronic assembly room "could be bugged" when the 1980 election was held there. He claimed that a Board agent had treated him disparately as a union observer, as against a company observer, when calling employees in to vote (but unpersuasively as it appeared that Haynes sought to do more than greet employees). Haynes expressed the view, however, that everyone was able to vote the way he or she wanted. He acknowledged certifying at the end of the election that the "balloting was fairly conducted."<sup>29</sup>

*Charles Roark*, who works in the paint shop, testified he and others smoked in no-smoking areas at the Halliburton plant. Employees eat "cheese and crackers, peanuts, and stuff like that" during worktime, he said.

According to Roark, employees leave their work area without permission to get parts or to get a drink or cigarettes. When an employee wants to be off, he, or someone for him, may call in at the beginning of the shift, Roark said. Roark stated that he had seen both union and company stickers on toolboxes but the company stickers were left alone.

*Shop Foreman George Kindred*, who was present at the meeting with other Halliburton officials on March 26, 1980, when Frazier read his 17-point memorandum to

<sup>28</sup> On cross-examination, Haynes said he could not recall where he sat at the employees' meeting but claimed he could identify the portion of Frazier's written speech (G.C. Exh. 4) which he had referred to.

<sup>29</sup> Haynes' testimony was not impressive. Bob Smith and his wife, Kandi, persuasively contradicted Haynes' testimony that Smith had grabbed him and disparaged the Union's literature. The claim that Haynes was disparately treated by a Board agent at an election was effectively contradicted by Denny Anderson who assisted Board agents as a "runner" in summoning employees to vote at the 1978 and 1980 elections. Anderson also contradicted Haynes' testimony that management personnel were in the polling area at the 1978 election.

Herring, testified that Herring was discharged later that morning for overstaying his break—"one of the violations that was read to him." Kindred, who said he had 5 line foremen and approximately 115 employees under him, said the meeting with Herring and Halliburton officials was over by 8:45 a.m. and by 9:14 or 9:15 a.m. (approximately 5 minutes after the designated morning break had ended) he saw Herring in the sheet metal department, which is situated in a building different from where Herring works.

Kindred said he saw Herring go on his break at 9 a.m., and at 9:20 a.m. he conferred in Frazier's office with Frazier, Alton Phelps, and Wilmer Malotte about terminating Herring.<sup>30</sup> Kindred stated that he informed Herring at 9:40 a.m. in Kindred's office, where Malotte had brought Herring, that he was being fired for his late return to work from his break. Herring's response was, according to Kindred, "I was not late and I am not going anywhere." Kindred said Herring did not agree to leave until he had four conversations with Herring about his discharge. There was no smiling, no shouting, and no reference to kidding during these conversations, Kindred said, contrary to what Herring had testified. Herring insisted that his exact pay be computed before he would leave; payment in Coffeyville that afternoon by means of a Western Union money order sent from the company headquarters in Oklahoma was arranged, Kindred said. Police were summoned to the plant, but it was not necessary for them to go into the plant. Malotte gave Herring a note so he could take his personal tools through the gate.

Kindred testified he had submitted a written complaint about Herring's abusive language a few days before Herring was terminated (Resp. Exh. 22). According to Kindred, Herring came to see Kindred on March 20, 1980, seeking payment for March 4, 1980, a day Herring had been absent from work. Kindred said he expressed the view that Herring was not entitled to sick pay as he did not call in that day until the shift "was approximately half over with." Herring told Kindred that he had called the guard that morning, but Kindred responded that there was no record of such call. According to Kindred, Herring cursed the guards, referring to them as "f—kers" and made mention of a "God damn foreman." Kindred said he told Herring to return to work at this point, and Herring responded, "Go F—k yourself." Kindred said he then told Herring that they were going to the personnel office but Herring walked off.<sup>31</sup>

During his testimony Kindred stated Halliburton policy with respect to taking (morning) breaks and time off as follows: Employees have a 10-minute break in the morning; they are allowed to take it after the designated breaktime if something keeps them from taking it "on time"; employees may go out of their work area during breaktimes but they are expected to be back at the end of the break. "They are to leave—start their break at the

first whistle and be back in their work area at the end of the break"; and "[e]mployees are to call in before or soon after the shift begins."

J. R. "Fred" McDaniels testified he saw Sylvester Herring in the trailer area around 9:05 a.m. on March 26, 1980, while he (McDaniels) was playing dominoes. McDaniel stated that Herring told him he had something to tell him when the playing was over, but "after we got through playing the break whistle rang and he left." According to McDaniels, employees would freely eat snacks ("mostly candy bars") in work areas during work-time and go to the bathroom or get a drink during work-time.

McDaniels also testified that he passed out union literature at the main gate on certain mornings in January 1980 and that Pete Robnett was in the guard shack on three of those days.

McDaniels stated that company "Love it or Leave it" stickers were posted on lockers or toolboxes (which he said were the same thing) from September 1979 to around January 1980 and, "as far as I know," they were allowed to remain. According to McDaniels, his foreman, Leo Dodson, told him one morning in September 1979 that he did not want McDaniels putting union stickers on lockers. McDaniels said he then asked Dodson if he was the one who had taken the union stickers down. McDaniels indicated Dodson smiled and said, "Well, I don't want you putting anymore up." McDaniels testified that at a later time, in January 1980, Dodson told him that "he wished I wouldn't give out union pencils on company time. . . ." Another employee, Paul Hymer, McDaniels said, was allowed to distribute work gloves and caps to employees.<sup>32</sup>

Kenneth Ray Cobb, an inspector who had worked with Herring on the Union's organizing committee, testified he saw Herring go to the office before breaktime ("I wasn't paying attention to what time it was," he said on cross-examination) and return to his work area by 9:15 a.m. on March 26, 1980, Herring's last day of work.

Much of Cobb's testimony—which dealt with company policy with respect to calling in for time off, taking breaks, leaving the work area, displaying materials on toolboxes, smoking in the plant, eating and reading on the job—was cumulative. Cobb did indicate that Malotte watched, and had threatened to write up, Herring about leaving his area. Cobb stated that he had seen employees, including supervisors, smoke in no-smoking areas of the paint shop; also that he and other employees would eat snacks and read books and magazines when they had work to do.

Marie O'Connell, a production worker at Halliburton, testified that she had a conversation with her supervisor in mid-January 1980 as follows:

<sup>32</sup> McDaniels said he put union stickers on his locker on election day after he had been told not to do so. McDaniels impressed me as a biased witness. On January 29, 1980, he made a claim for sick leave for the previous day, even though he admittedly did not call in until 12:30 or 1 p.m., several hours after his shift had started. He stated that Kindred and Dodson told him that he would be advised on Thursday, after the election, whether he would be paid sick leave. He agreed, however, on cross-examination that he had been previously told in November that in case of illness he should call in before the shift began.

<sup>30</sup> Herring claimed that he went directly from the meeting to take his break.

<sup>31</sup> Kindred indicated that there had been other occasions (specifically one in the paint shop in the previous January or February) when Herring had not shown respect to his supervisors and other instances of "Herring not being in his work area and overstaying breaks."

Bob Smith come into my stall, and he asked me how us girls were going to vote, that he had been talking to the guys in the department and he knew how they were going to vote, and I told him that I really couldn't speak for the others, but that I was going to vote for the union, that I was undecided earlier but I had decided that I was going to vote for the union.

She was asked about the Company's call-in policy,<sup>33</sup> about the time and place for taking breaks, and about eating in work areas and moving around the plant. She said she had observed persons eat during worktime quite a few times. Permission to visit and talk was necessary, she said, but employees were free to do such things as get a drink, cigarettes, or first aid, or to go to the restroom.

When O'Connell was recalled to testify for the Union, she said she understood the Company was opposed to the Union. She said she had attended five or six meetings called by the Company in January 1980. Her supervisor had told her of the meetings, she said, but she was also told that she was free to stay in her work area if she wished. O'Connell testified that the atmosphere at the plant in January 1980 "was very tense" and that Diana Wade and others had expressed concern that the electronics assembly room was bugged so it would be known how employees would vote. O'Connell indicated, however, that she had no thoughts of this kind.<sup>34</sup>

Barbara Moore testified about the time and place of taking breaks and statements she said she heard made by Personnel Manager Jerry Messersmith, a foreman named (Ray) Sharp, and her own foreman, Leo Dodson, one day in January 1980.<sup>35</sup> Moore indicated that Messersmith met with approximately 20 female workers in "a kind of question-and-answer period" before the election. She said Messersmith referred to a strike in Duncan (the location of another Halliburton facility) and the fact that workers had not been called back. Messersmith indicated, she said, in a response to a question asked, "Yes, there could be violence" and that a strike could be called without the employees having "much to say about it." Moore said she then indicated that she thought it was necessary to have a strike vote and a period when employees could resign. Messersmith said he could check into this for her.

Moore also testified that earlier on the same day, before noon, she had overheard Sharp, the foreman in the steel yard office, tell a clerk and dispatcher there, after hearing one of them refer to the unsettling effect of the election campaign that "You know what you do about this, don't you? Vote no." Moore said she spoke up and said she was going to vote "yes," at which point Sharp "just looked at me and left the office."

Later in the day, according to Moore, her foreman, Leo Dodson, took her to the office and told her he had

to write her up for being out sick for 60 days (in the past 6 months). She indicated on cross-examination that she knew that wage increases were affected by time off and that she had been absent. She said she had heard that persons had been written up for missing 80 hours but not 60. She said her May 1980 increase was held up because of her absences, as it had been before.

Joseph Robbins, who was off work with an injury at the time of his appearance, was the last witness to testify on the General Counsel's case-in-chief. Robbins indicated that he believed he had been singled out for attention because of his association with Sylvester Herring. He stated that one day in August 1979 he had left the building where his work area was located and went to the paint shop to find his leadman, Jerry Plumby, as he had nothing to do. He saw Herring sitting on a pile of blocks "seriously talking to some people," and he sat down next to him. Shop Superintendent Alton Phelps came by shortly and, after inquiring what he was doing there, sent Robbins back to his work area. According to Robbins, Phelps came by his work area later the same day and again asked why he had been out of his work area. Robbins said he spoke to his superior, Ray Guinn, later about the incident and that Guinn indicated that Phelps would "probably" not have said anything had he been alone and not sitting next to Herring.<sup>36</sup>

Earl Steven Myers, the first witness called by the Union, testified that he recalled that Sylvester was called out of the test area around 8:30 a.m. on the day Sylvester was discharged. He said he did not see Sylvester again until after the morning break, around 9:10 or 9:15 a.m.

Linda Lee King,<sup>37</sup> said she worked for Respondent from November 10, 1977, until "I terminated myself April 14, 1980." She said she was an organizer for the Union and served as an observer for it at the January 1980 election. King expressed the view that Herring, also an organizer for the Union, was the only one she knew of who was required to stay in his own work area.

King stated that at a company meeting she attended before the January 1980 election Plant Manager Frazier referred to a strike and violence in Salina, Kansas. She said she did not recall being told that she did not have to attend the meeting.<sup>38</sup>

<sup>36</sup> Raymond Guinn recalled the incident about which Robbins testified and gave a different view of it. Guinn, who had been a supervisor but was working as an assembler at the time of his testimony, said Robbins should not have been out of his own building and work area. He testified that Phelps had mentioned the incident to him but had not indicated any significance in the fact that Robbins had been talking with Herring. As indicated, *infra*, Shop Superintendent Phelps also recalled the incident and mentioned that Herring was not a factor in sending Robbins back to his own work area.

<sup>37</sup> The transcript incorrectly identifies this witness as "Brenda Lee King."

<sup>38</sup> Another union witness, Lendall, said employees were told they could leave "after we got to the meetings." King stated that there "was a lot of tension" prior to the election. At first she could only recall that Frazier had mentioned violence and strikes during one of his January 1980 meetings with employees but later testified that a statement made by him at the time (i.e., "The results of the election will affect each of us for a long time" and read to her by counsel) made her feel that Halliburton would close the Coffeyville plant. She stated that she was told by a foreman, John Boyd, "and just other union organizers and people that worked at Halliburton" that the plant would close. She agreed, however,

*Continued*

<sup>33</sup> O'Connell stated that employees were to call in at least 15 minutes before the bell and was told on one occasion, after her sister had called in for her, to call in herself.

<sup>34</sup> O'Connell impressed me as a truthful witness, and I therefore credit her testimony.

<sup>35</sup> The conversations apparently took place on January 23, 1980.



Jerry Messersmith, personnel manager at Respondent's Coffeyville plant for approximately 5 years, when called by the General Counsel, identified "preelection materials" disseminated to employees prior to the January 30, 1980, election by the Company<sup>39</sup> as follows:

- a. Form letter of Bruce Frazier dated January 27, 1980 (Union's Exh. 5).
- b. Form letter of Bruce Frazier dated January 22, 1980 (Union's Exh. 6).
- c. Pay check insert notice stating, in part, "No union dues have been deducted" (disseminated to employees 1/21/80, Union's Exh. 7).
- d. Form letter of Bruce Frazier dated January 16, 1980 (Union's Exh. 8).
- e. "Q and A" form #5 (Union's Exh. 9).
- f. "Q and A" form #4 (Union's Exh. 10).
- g. "Q and A" form #3 (Union's Exh. 11).
- h. "Q and A" form #2 (Union's Exh. 12).
- i. Form letter of Bruce Frazier dated January 9, 1980 (Union's Exh. B).
- j. "Q and A" form #1 (Union's Exh. 14).
- k. Form letter of Bruce Frazier dated January 4, 1980 (Union's Exh. 15).

Messersmith said he knew some of the union supporters at the Coffeyville plant at the time of the 1980 election because 30 to 40 of the 480 or so employees at the plant wore union hats or other union insignias. He said he had seen union representatives at the preelection conferences and knew that Haynes (who also acted as a union observer), Herring, King, and Vernon Stout were union supporters.

Messersmith stated that he had personally observed from the guard shack, which has windows on the north and west, the distribution of union literature at the main gate about three times in January 1980. The first time was early in January when he said he was in the shack with guard Ron Sweetan for approximately 5 minutes. He thought he saw Vernon Stout and three or so others handbilling on that occasion. Messersmith said he was in the guard office again for 4 or 5 minutes in mid-January 1980 with guards Gail Jones and Virgil Malone when he observed five or six employees (Joe Robbins among them he thought) passing out leaflets. The third time he

that Frazier had not suggested such a possibility in his remarks to employees.

Boyd, who said he supervised King in 1978 but not in 1980, denied ever telling King Halliburton would close and move. He said he "had no business at all with her" at the second election. King impressed me as being somewhat biased against Respondent. She had a workmen's compensation case pending against the Company at the time of giving her testimony. King asserted that two employees had mentioned the possibility of "little cameras or something" being placed in the electronic assembly room, where the election was held under the supervision of three Board agents, and that "[w]e wanted it held off the company property."

<sup>39</sup> Messersmith indicated that many of the materials (specifically the "Q and A" forms) were prepared at the Company's Duncan, Oklahoma, office but that the letters and speeches of Bruce Frazier were prepared in Coffeyville. Messersmith also indicated that some of the documents (specifically the "Q and A" forms) were posted on company bulletin boards not available for use by employees. He said bulletin boards located in the main break area and in the paint and sandblast area were available for employees to use in posting materials (for or against the Union) during the organizing campaign.

Messersmith was recalled by Respondent to testify as a defense witness. Such defense testimony is summarized, *infra*.

observed handbilling at the main gate was on election day, or a day shortly before that, when he saw five or six persons distributing literature around 6:45 a.m.<sup>40</sup>

Messersmith testified that on another occasion in mid-January 1980 he and Bruce Frazier were in the guard shack one afternoon, about the time there was a change in shifts, and observed four and five persons distribute literature. He said Frazier and he were in the shack on "company business" to look at a tank or truck and discussed the matter for 4 or 5 minutes. Messersmith said he did not discuss the handbilling with Frazier at that time but did so at another time. He stated that he and Frazier had explained to Halliburton supervisors that employees had the right to distribute literature on company property during nonwork time.

Messersmith also testified concerning "information meetings" that he and another Halliburton official, Employee Relations Manager Gates McPhail, held with Respondent's employees at Coffeyville in January 1980 before the election on January 30. Messersmith said he held approximately 14 meetings with groups of employees (15 to 20 in each) beginning on January 23. He stated that he would read through the "information meeting" text (Union's Exh. 3) each time but there were also discussions with employees at such meetings. Employees were told at the beginning of each meeting that they were free to return to their work areas, but he did not recall that any one did so.

Messersmith also testified concerning company policies that had been pursued during the hearing. He said that "snacks" were to be only eaten during breaktime. Messersmith stated that he had spoken to an employee while at work about eating a piece of cake and to a supervisor of employees observed eating sunflower seeds (determined later not to be a snack) and a candy bar. There were two nonsmoking areas where painting is done, Messersmith said. He said he had not seen anyone smoke there, but he believed that persons had been counseled about smoking in nonsmoking areas. He recalled no one who had required disciplining for such activity.

According to Messersmith, employees are not to leave their work areas without permission of their supervisors. He explained the Company's "absentee policy" as follows. Employees are to call in by 7 or 7:15 a.m. if they are unable to come to work that day (by 4 p.m. if on the 3:30 p.m. shift). The first or second violation of this rule results in counseling, but a third violation would, he thought, probably cause a supervisor to require a doctor's certificate. A warning or suspension could follow this. If the person were "too sick to call in," that fact would be taken into account. Time off for illness, injury, or other "voluntary time off"—except vacation—for 40-1/2 hours or more during a 6-month period results in the delay of a regular wage increase. As for the display of materials, Messersmith stated employees may hang up calendars on the blinds and place pictures inside of toolboxes. They may put stickers on their own individual toolboxes, but nothing is to be placed on company tool-

<sup>40</sup> Messersmith said he routinely visited the guards each morning and gave them instructions at other times. He said the guards were under his supervision, although they were employees of an outside contractor.



boxes. He said he had asked supervisors to remove materials that had been placed on company toolboxes. He stated that he had personally removed "Halliburton, love it or leave it" as well as IAM stickers from bulletin boards. Messersmith said he was also aware that Wilmer Malotte had removed IAM stickers from company walls in the paint and sandblast area of the plant.

Noel "Pat" Davis, a somewhat vague and uncertain witness who worked in water test, said he recalled the day Herring was terminated. He said he recalled that Herring was called to the office around 8:30 a.m. and that he saw Herring again after the break around 9:15 a.m., that day. He could not recall whether Herring had returned from the office before the break started at 9 o'clock. Davis also had some recollection of an occasion when Messersmith and other company officials came to talk to him about Herring. They discussed the badge-grabbing incident. Malotte, he recalled, had reached for Herring's badge, which had a union sticker on it, from a rack, and Herring recovered it. Davis also said he told the officials at that time that Herring did not leave the work area or eat (on the job) "any more than anybody else."

Professor Steve Rosenstone, an assistant professor at Yale University, testified that he had done research in voting behavior and had taught the subject. His purpose in testifying, he said, was to explain why people vote the way they do. He professed no expertise in either labor law or NLRB procedures. He explained that political and other social scientists apply certain general rules to elections. By making certain assumptions and conducting polls close to an election he indicated "quite accurate" predictions can be made as to the outcome. There are, he said, factors which influence a person whether to vote—the proximity to the polling place, weather, whether others vote, etc. Apart from the question of who votes, there are also factors affecting how one votes—education, race, income, economy, etc. The effect of such latter factors will vary, he said, depending on how "salient concerns" they are to the voter. A desire to keep one's job is one of the most fundamental survival instincts, he asserted. "Personal communication" is the most effective way of influencing employees how to vote in a representation election in his view.

According to Dr. Rosenstone, the location of a polling place should be in a "totally neutral atmosphere" where everybody has free access and conditions can be controlled (with no "bumper stickers or any campaigning") in order to establish "legitimacy" of the election so the voter perceives his vote is secret and the election fair. Rosenstone would not attempt to evaluate what a good turnout of an election would be. "That," he said, "is a value judgment," and none of his concern. A "high turnout is not necessarily good," he added. He expressed the view that elections held on company premises would tilt the results toward the employer, but he indicated it might be possible to have a neutral location on company property.<sup>41</sup>

<sup>41</sup> Dr. Rosenstone, an articulate, political scientist scholar, was an impressive witness. However, he was of little help in resolving the matters in issue here. The Board has had much experience in conducting elections and is, therefore, aware of factors that unfairly influence employees

Dr. Michael Gordon, who holds degrees in psychology and is a professor of management at the University of Tennessee, undertook to analyze certain passages in company materials (Frazier speeches and "information meeting" materials) used during the second organizing campaign. He expressed the view that the materials were designed to change people's behavior by inducing fear. He believed the materials, which he noted were repetitive, were used to address captive audiences who would associate fear with the plant environment.<sup>42</sup>

James Malotte, an employee of IAM for 20 years and currently in charge of the organizing efforts of the Union in 10 midwestern States, testified as an expert and as an advocate for the Union's legal position. Much of his testimony concerned his organizing of employees other than Halliburton. He was critical of some of the Board's election procedures and Halliburton's representation, which he regarded as antiunion. According to Malotte, a union "loses absolute control" upon filing a petition for an election with the Board. The Board thereafter deals with the employer, he asserted, and the election is scheduled at a place without regard to the union's desires. The union may agree to an election, he said, even though held on company premises, in order to have it held as early as possible. According to Malotte, it would be impossible to have a fair and uncoerced election on Halliburton's premises. His position is, he said, that there can be no free choice when the election is held on the property of a company against whom he has filed charges and the Board has issued a complaint. But Malotte also indicated that the circumstances of each case must be considered in determining whether an election on plant premises would be appropriate.

Malotte was critical of passages in Messersmith's "information meeting" outlined (Union's Exh. 5) and Frazier's January 28, 1980, speech (Union's Exh. 2). Malotte asserted, contrary to Messersmith's material, that the union's revenue comes only from dues or initiation fees (the Coffeyville Local has no initiation fees, Malotte asserted). Malotte also claimed that Frazier had misstated the Union's rule on voting authorization of strikes. (On cross-examination Malotte agreed that the Union's constitution allowed assessments and that 20 percent of 30 per-

in voting. See *General Knit of California, Inc.*, 239 NLRB 619 (1978). Rosenstone had no first hand information about holding of Board elections, and his perspective was not free of bias. His familiarity with Board elections came from the study of a book and two articles from the *Journal of Applied Psychology* (Resp. Exhs. 76 and 77). In preparing his testimony he had relied on the Union's analysis of the organizing campaign and was ready to attribute greater effect to the Company's efforts than the Union without ever viewing the union literature.

<sup>42</sup> On cross-examination, Gordon disavowed attempting to pass on the legality or propriety of the company materials. He admitted being well paid by the Union (\$400 per day) for his testimony. He said he had not been shown any of the Union's campaign literature.

The Union also called Ogden Fields, a part-time labor arbitrator who was the Board's executive secretary from 1960 until 1972, to testify in favor of its position that unions should have the right to an election away from the employer's plant. His testimony is being disregarded, however, as he sat in the hearing room and heard other expert testimony in violation of the sequestration rule that had been invoked at the outset of the hearing.

cent of persons in attendance at a meeting could authorize a strike.<sup>43</sup>

*Harold McIver*, organizational director of the Industrial Union Department, AFL-CIO, testified that he participated in 339 organizing campaigns and had won more than 60 percent of them. Like the other union expert witnesses, McIver testified in favor of having elections away from the Employer's premises. He said he was familiar with three off-premises elections (one held in a gym at the union's request, one in a rented trailer because of the employer's lockout, and one at a post office to avoid delay requested by the employer), although the union lost two of them.

According to McIver, a union's major obstacle in organizing workers "is to overcome the fear element that is implanted in the minds of workers." This element, he said, is implanted by such things as "captive audience meetings, departmental meetings, letters . . ." and "one-on-one" meetings of the supervisor and employee. Usually the employer will try to create the impression that he is in control of the election, McIver stated, and may urge that the election be held in the same place where "captive audience speeches" were held. He did not think union materials would evoke fear—not in the campaigns he had directed anyway. In McIver's opinion it would not be possible to "restore laboratory conditions in a plant" where there had been a violation of the Act.<sup>44</sup>

*William Williamson*, plant engineer for Halliburton in Coffeyville, was the first of several employee witnesses called by Respondent. Williamson testified that on July 10, 1979, on a day he was filling in as acting shop foreman for Pete Robnett, he had occasion to speak to Sylvester Herring about being out of his work area (500 feet away) for approximately 30 minutes without permission of his supervisor, Wilmer Malotte. Williamson stated that Herring, when he arrived at a meeting that day with other Halliburton officials (Phelps, Dodson, Malotte, and Messersmith), berated Malotte and Dodson about "riding his back." Herring also claimed he had been out of his work area looking for an inspector. Williamson, who said he did not know at the time that Herring was a union supporter, directed Herring not to leave his work area thereafter during worktime without permission except to the restroom in his own area.

*Bob Smith*, a line foreman in miscellaneous welding and husband of Kandi Smith, a clerical employee in the steel yard of the Halliburton plant, disputed testimony given by Carl Robert Haynes, Ed Jones, and Marie O'Connell.

Smith said he had seen Haynes and Ed Jones handbiling in the shelter area a number of times. He said he would exchange "Hi's" with Haynes whenever he passed him, but he denied grabbing Haynes by the neck on Jan-

uary 21, 1980, or at any other time as he left the plant.<sup>45</sup> He also denied ever saying to Haynes anything to the effect that "we do not need this union trash or union garbage." Smith, a large man who had fingers missing on his right hand, said he would use his left hand if he were to grip an object or a person.

Smith said he had been a member of the Machinists Union for 3 years in Tulsa and often told of his experiences with the Union when asked about it. He said he had not asked O'Connell, whom he supervised, how the girls or anyone else were going to vote. He said he asked no questions about the Union and had not indicated how the men were going to vote.

Smith said he was aware the employees in other areas ate on the job, but he did not allow it in his own.

*Kandi Smith* testified she would come and go to work with her husband, Bob, whenever her husband worked the day shift. She said she had seen Haynes distribute literature when leaving the plant but never saw her husband grab Haynes by the neck or anyone else. After examining her timecards for January 21 and 22, 1980, Kandi said she left with her husband on the afternoon of January 21 but not January 22. She said she left the plant about 11 a.m. on January 22 to begin a vacation.

Kandi was asked whether she had heard Barbara Moore speak about the election. According to Kandi, Moore would voice an opinion for and against the Union to people in the office "depend[ing] on what day you talked to her."

*Leo Carter*, who referred to himself as a "sub foreman," said he as well as Line Foremen Leo Dodson and Wilmer Malotte had supervised Sylvester Herring. Carter testified concerning several incidents involving Herring, including these:

a. 11/20/78—Carter and Dodson discussed with Herring an increase given 11/5/78 to Herring, who thought it inadequate; told, among other things, that "job performance, attendance, cooperation, initiative" needed improvement (Resp. Exh. 24).

b. 12/20/78—Herring initially refused to put air pads in a second horizontal tank but agreed to do so when again asked by Malotte (Resp. Exh. 25).

c. 7/26/78—Herring late for work (Resp. Exh. 26).

Carter denied hearing Frazier tell Herring that he should quit union activities and become a "good employee" as Herring had testified. Carter testified he had not told Herring that he could take a week's vacation to go to Las Vegas as Herring had claimed when Carter had left for vacation. Herring was transferred to work under Malotte in 1978 to avoid a possible personality conflict between Herring and Dodson, Carter said, but it was to no avail. Said Carter:

He was still the same type of person he was, he was belligerent to his supervisor or authority. He would not obey rules and regulations by which we govern the shop.

<sup>43</sup> Malotte said he had decided in 1978 to organize companies in Coffeyville and had thereafter encountered difficulty with local police in organizing Funk Manufacturing Company. Following an investigation by an IAM attorney, the City of Coffeyville and the IAM signed an "Agreement and Covenant Not to Sue" (Union's Exh. 23).

<sup>44</sup> Harold Lorenz, IAM lodge representative for the midwest territory, identified the *Excelsior* list (Union's Exh. 25) for the January 1980 election which, as previously noted, the Union lost 205 to 150. Lorenz also identified a document (Union's Exh. 26) analyzing the residences of Halliburton employees on the list in relation to the plant.

<sup>45</sup> Smith said he worked the day shift 4 weeks in January 1980 and would have left with his wife around 3:30 p.m. on Monday, January 21.

Carter said he talked to Mary Kay Luke and a group of 12 or 13 employees but did not say at the time (as she had testified) that transfers could not be made under a union contract and that layoffs would result instead. Carter said his answer on this subject would have been "[t]hese things would probably have to be negotiated."

With respect to plant work rules, Carter testified that eating is not allowed during worktime, although lunch and breaktime are sometimes delayed by workload demands; that no-smoking rules are enforced in five areas of the plant (two inside); that employees are expected to stay in their work areas but may leave if work related; that employees are free to take breaks wherever they wish but are expected to be in their work areas "at the start" and "by the end of the break"; employees may not read nonwork-related materials on worktime; and union stickers could be placed on personal property but not company property.

Carter indicated on cross-examination that eating of mints or something of that kind would not interfere with work and would not be objectionable. He recalled reprimanding an employee for reading on the job during "down time." Employees on break were not to wait until the buzzer sounds to return to work, he said. Carter said he knew certain employees (Herring, Haynes, Newton, McDaniel, and Armstrong) supported the Union in 1980 and that others, who he said he could not identify, posted or distributed "Halliburton, Love it or Leave it" literature. He said both union and company stickers were removed from company property.

*Leo Dodson*, a line foreman in the trailer department, testified that Herring worked under his supervision in stall 61 as an assembler before being transferred to work under Wilmer Malotte. Dodson said Herring was a "kind of a leadman" and that he trained new employees, a usual practice at Halliburton. Dodson identified two employees who complained that they could not get along with him.

Herring continued to take his breaks in "our area," about a 5-minute walk from his new work station, after being transferred, Dodson said. According to Dodson, Herring would usually stay in the trailer department building until the whistle blew while on break, although he said employees were supposed to be back in their own work areas at that time.

Dodson said he had reported Herring out of his work area on the morning of July 10, 1979. He said he knew Herring no longer worked in the trailer department and observed that he was interfering with the work of one of his employees, Ron Mitchell.

Dodson acknowledged telling Barbara Moore on January 23, 1980 (as indicated in G.C. Exh. 8), that she had accumulated 60 "off hours" (during the preceding 6 months) and that it would operate to delay the effective date of her wage increase. Dodson said he did not know she favored the union and that it was company practice to inform employees when they had accumulated 40, 60, and 80 "off hours." He said he had been on vacation in December 1979 and that she was out sick on January 17 and 18.

Dodson testified that he did not permit employees to eat during worktime (although he indicated some fore-

men would allow eating of a snack if it did not interfere with work) and had never observed employees reading nonwork-related materials during worktime. Employees working under him, he said, are not to leave the work area, except to use the restroom, without his permission. He said he had given verbal warnings to employees for doing so.

Dodson also said he had removed union stickers from company property every day during the 1980 organizing campaign. He said he once told Fred McDaniel that putting union stickers on company-owned tool boxes was contrary to company policy. Dodson denied that he ever "bird-dogged" any employee. He recalled that some employees (Herring, Haynes, Lendall, and McDaniel) wore union insignias or distributed literature, but he said all employees were treated the same.

*Ronald Mitchell*, a Halliburton employee who had worked side by side with Herring for about a year under Leo Dodson, disliked working with Herring. He said he had not suggested that a meeting be held at the union hall to get rid of Dodson, or that a petition be filed concerning Dodson, as Herring had testified. He said he, as well as others at the plant, did sign a letter concerning Dodson and that he thereafter decided to speak to Frazier, "since I had started the ball rolling so to speak" and "explain what the situation was." Mitchell stated that Herring wanted to fight after Mitchell had spoken with Frazier.

According to Mitchell, employees (Millican, Wright, and Holland) had complained about working with Herring as "he did not pull his weight" and used "abusive language." He said Herring argued with Foreman Dodson and was disrespectful to him.

Herring solicited union cards during working hours and would leave his work area many times each—"10, 12, 15, more possibly," Mitchell said. Herring also abused breaktime, Mitchell asserted, by starting his break early and returning to work late.<sup>46</sup> Mitchell stated that in his area "we were not to eat food during working hours," although he conceded "it has happened." No stickers or other materials were to be placed on the outside of company lockers, Mitchell said. He recalled that Herring and others wore union insignias.<sup>47</sup>

*John Boyd*, a centralizers line foreman, said he supervised Linda King at the time of the October 1978 election and was asked about the Union at that time by her and others. He said he never told her or anyone that the Company would close and move to Davis. He stated that employees talked to him about Frazier's 1980 speeches but that he had "no business" with King at the time of the second election.

*Welding Shop Foreman Marvin Curtis Williams* testified that he saw Sylvester Herring shortly after the morning

<sup>46</sup> Mitchell said that some others also abused breaktime. He said Dodson had explained breaktime as follows:

We were to take our break when the whistle blew at 9 o'clock and be in our work area ready to work at 9:10 when the whistle blew again. This was also for the lunch and evening break.

<sup>47</sup> Mitchell agreed on cross-examination that he had seen "Halliburton, Love it or Leave it" stickers placed on toolboxes. He said he had signed a union card but never put up any stickers.

break ended on March 26, 1980, the day Herring was discharged. Herring's supervisor, Wilmer Malotte, had called around 9:13 a.m., Williams said, and asked if he had seen Herring. Williams said he reported that he could see Herring in the miscellaneous inspection area. According to Williams, Herring talked with Sonny Armstrong for a minute or two and then went over to the sheet metal area and spoke with a couple of persons there.

*Samuel Frederick Witwer* indicated during his testimony that he was not a strict disciplinarian in supervising the tank shop as a line foreman. He said employees in his area "should not be eating during working time" but that they do eat sunflower seeds and (infrequently) a candy bar. An employee had recently offered him a doughnut but "took the hint" and put it away when Witwer indicated to the employee that he might have one "at break-time." Witwer said he knew of no no-smoking zone in his building and had seen no one smoking in such zones at the plant. Employees "should not be" reading materials unrelated to the job; he said he had noticed employees would stop reading when they saw him. Employees do not always check with him before leaving the area, but he said he would write them up if their leaving the area becomes "habitual."

*Larry Dean Johnson* testified that he was employed as a general welder in trailer assembly under Leo Dodson. He said he worked with Sylvester Herring for 2 to 3 weeks. "Most of the guys could not get along with him and Mr. Dodson usually put the new hand with him to work," he said.<sup>48</sup> According to Johnson, Herring tried to direct other employees and "they kind of resented it most of the time." He recalled that Ralph Holland and Ray Millican were two employees who asked to be transferred so as not to have to work with him. "There was a little bit higher morale . . . after [Herring] was transferred out of our area."

Johnson recalled that Herring continued to come to the trailer assembly area for his break. "Sometimes he would hang around quite awhile in our area and talk with different fellows" after the whistle had blown. "We have been told" he said that "immediately after the whistle blows, we are supposed to be in our work area ready to go to work."

According to Johnson, "Sylvester kind of thought that [Dodson] watched after him a little too much . . . and that kind of made mixed emotions between the two of them." But Johnson did not think Herring had a legitimate complaint on this score; everyone who worked at Halliburton was watched closely, he said. Johnson recalled Herring had passed out union materials during worktime, and Johnson thought this led to friction between Dodson and Herring.

Johnson said Herring would leave his work area four or five times a day for reasons unknown to him. Johnson agreed on cross-examination that he also would leave two or three times a day, but he did not say for what reasons.

*Ronald R. Sweetan, Jr.*, former guard sergeant, testified he was assigned to oversee guards at the Halliburton

plant and regularly worked from 6:30 a.m. to 2:30 p.m. from June 1979 until April 10, 1980, when the guard force was terminated. At the time he testified he worked in miscellaneous welding.

Sweetan identified an AVO dated January 29, 1980 (Resp. Exh. 29), which he wrote up that day to cover an incident he described as follows:

At approximately 6:20, Sylvester Herring approached the walk-through gate at Halliburton Services. He went inside the gate, turned over a red, white and blue trash barrel, subsequently dumping out what was inside. And then he went down to another trash barrel that is located about 20 feet, maybe 30 feet, from the first one and rolled it around the corner. I asked Mr. Herring to turn it over and he refused.

Sweetan said he thereafter picked up the trash (papers, pop cans, cigarettes) himself and then turned the first barrel back over. The trash barrel had been placed there, Sweetan said, after the handbilling had begun a week or so earlier.<sup>49</sup>

Sweetan stated that a log was kept of phone calls received at the guard office and that he recalled that Personnel Manager Messersmith had asked him if Herring had called in one day, March 4, 1980. Sweetan said he told Messersmith that Herring had not called in that day.

Management people passed through the guard office area, Sweetan stated, and did so during the handbilling in January 1980. Pete Robnett and Messersmith would stop briefly and talk, especially Messersmith, Sweetan said. Sweetan said he did not see anyone watch the handbilling from the guard office. Nor did he ever see Bob Smith jump on another employee at the entrance of the guard's office.

*Hamilton Moore*, a former guard at the Halliburton plant at Coffeyville testified:

1. Based on the guard log (Resp. Exh. 15) he believed Herring arrived at 6:50 a.m. (Moore thought he had changed the time Herring had originally entered) and (as Moore's own entries indicated) that Herring left the plant at 7:07 and returned again at 7:11 a.m.

2. Based on his own memorandum that he had prepared, Herring arrived late with another person on September 1, 1978, and on February 8, 1979; and that Herring and the other person with him each time had refused to sign the log (Resp. Exhs. 64 and 65).

3. Based on a memorandum that he had prepared, Herring left the plant at 7:10 a.m. and returned at 7:25 a.m. on February 9, 1979 (Resp. Exh. 33(b)).<sup>50</sup>

<sup>48</sup> Messersmith testified that three additional barrels were placed at the main gate in January 1980 because employees were wadding up the leaflets being handed out and throwing them on the ground.

<sup>50</sup> Respondent also called former guards Virgil Malone and Gail Jones, who had worked together and relieved Sergeant Sweetan in the afternoon. Jones said he worked the 2:30 to 10:30 p.m. shift, Monday through Friday, in January 1980 (he did not recall that he missed any work that month). He said he did not know an employee named Haynes but did know Bob Smith, who, he recalled, often went home with his wife. Jones said he did not remember seeing Smith ever grab another employee near the guard office at the time of shift change. Jones said he had been made

*Continued*

<sup>49</sup> Johnson said that there were six stalls in trailer assembly. Two general assemblers and one welder worked in each stall.

*Albert W. Pope* said he worked as a sandblaster under Don Spencer about 40 feet or so from the water test area where Herring had worked at the last job at Halliburton. He said he did not agree with Herring's sentiments about the Union.

According to Pope, Herring spent at least 1-1/2 hours of each 8 hour-shift talking "union." He said Herring placed union stickers on "company walls and such" and passed out pencils, caps, "and stuff like that" during worktime. (Pope said he had seen "Halliburton, Love it or Leave it" stickers on company property but did not know of a group of employees known as "the employees for the employees." Pope said Herring would walk around eating a sandwich at a time when it was "prohibited." He said others, including himself, might eat something on worktime—peanuts, sunflower seeds, or a candy bar—"but not a sandwich." Herring also would read a "book on the union" to employees in Pope's area and to employees in other areas, Pope said.

Pope thought that the electronic assembly room was as "good a place as any" for an election. He said he voted as he wished and had heard no one complain about the room.

*Herman Newton* testified that he worked with Herring in assembling tanks between December 1978 and July 1979. He did not regard himself as a supervisor, although his vote was challenged when he appeared at the January 1980 election.<sup>51</sup> Newton said he did not see any problem with holding the election in the assembly room and heard no complaint that the election was unfair.

Newton said he was not for the Union but knew that Herring was as "that was all his talk." He said Herring carried pamphlets and union stickers around with him at the plant.

Newton testified that he thought that the Company had been fair to Herring. Newton said Herring would give him "a little argument" about things and referred to the time he had asked Herring to help finish placing pads inside of a horizontal tank. Said Newton: "... I asked Sylvester to go in and tighten up the bolts and he said he had been in one tank and was not going in another." After Malotte spoke to Herring, he "finally did the work," Newton said. Newton said Herring "thought he had done more than anyone else, but he did not."

Newton further stated:

Well, I have tried to help Sylvester on the job in doing his work and trying to get his work done and stop a lot of confusion. I would try to get him to do his work. At times he would and at times he would not. I would talk with him and tell him what he had to do. I would say, "You asked for a job, so come

out here, perform your job and quit a lot of talking. That will get along with each and everyone and you will get your job done and you won't have any trouble."

Newton said he met with Phelps, Messersmith, and Malotte on Herring's behalf when he wanted off to go to Las Vegas. Newton said he told Herring at that time:

"Sylvester, they are giving you a chance to go to Vegas. When you come back, do your work and show them that you appreciate it, of them letting you go." I said, "That way they will know that you are trying to get your work done and do your work and cause no trouble."

Newton denied telling Herring, as Herring had claimed, that Malotte and the Company had "set him up" or that Newton would see to it that the Company would not fire Herring while working under him. "But I did say," to Herring, Newton said, "... do your work and you will be all right."

Newton testified Herring came to him again on the day of his discharge and asked for help, but he told him there was nothing he could do. Said Newton:

... I told him, "Sylvester, there is no more that I can do for you." I said, "I have done everything that I could do to try to help you and you won't listen." I said, "There is nothing else I can do."

*Wilmer Malotte*, who said he was line foreman for water test and small parts assembly, gave his version of a number of incidents involving Sylvester Herring. Among them:

a. Herring refused to enter and work in a tank on December 20, 1978 (Resp. Exh. 32).

b. Herring declined to work in the cold on December 28, 1978, because of a toothache and refused to see Leo Carter, Malotte's superior (Resp. Exh. 32) as directed.

c. Herring was suspended for 1 day (by Pete Robnett) after clocking in at 7:08 a.m. and leaving plant without permission until 7:30 a.m. to start his car with jumper cables (Resp. Exhs. 33a, 34, and 33b, note of Guard Hamilton).

d. Herring was out of his work area for approximately 30 minutes on July 10, 1979, refused to sign EPR's (Resp. Exhs. 35 and 36) and later met with Officials Malotte, Dodson, Phelps, and Williamson. Herring agreed to stay in the work area unless permission was obtained. Thereafter, Herring for several weeks requested AVOs to leave area "as his own idea."

e. Herring was suspended for 3 days for leaving plant on September 5, 1979, without permission to turn off car lights.

f. Herring refused to sign the log when entering and leaving the plant at other than normal times (late on February 8, 1979, Resp. Exh. 39; late leaving on vacation February 13, 1979, Resp. Exh. 40; and late on February 21, 1979).

aware that union agents might come into the plant, but he could not recall seeing Personnel Manager Messersmith's memorandum of November 26, 1979, on the subject (Resp. Exh. 63). Malone, on the other hand, did recall that Messersmith handed the memorandum to him and Jones. Malone said the memorandum was placed on the guard desk and could have been seen by an employee passing by. He said he never spoke to Ed Jones or any other employee about it. He said he did ask his partner, Gail Jones, if he knew the three persons mentioned in Messersmith's memorandum and was told they were with the Union.

<sup>51</sup> Foreman Malotte testified that Newton was in charge of the tank assembly area.

g. Herring failed to call in timely on January 4, and 5, February 21, and March 4, 1980 (Resp. Exhs. 41, 42, 43, and 45).<sup>52</sup>

h. The badge-grabbing incident that occurred shortly after the "dinner hour" on August 23, 1979 (Resp. Exh. 45) was described by Malotte as follows:

... I noticed that Sylvester had an IAM union sticker on his terminal badge, so I walked over to the rack and took his badge out of the rack and was going to remove the union sticker. Sylvester grabbed me by the left wrist and twisted it, while with his other hand, yanked the badge out of my right hand. I gave Sylvester a direct order to go to Pete Robnett's office, which he refused to do. . . .<sup>53</sup>

i. Meeting of Herring with Malotte and George Kindred on February 15, 1980, concerning an adjustment raise at which Herring stood up and told Kindred "in a loud voice that he didn't have to prove a God damned f—g thing to him or anybody else." Herring asked for and received a private interview with Bruce Frazier.

j. Las Vegas trip—Herring was allowed by Phelps, Malotte, Messersmith, and Robnett to take off June 11 to 15, 1979, after claiming that Leo Carter had promised him the time off and Newton spoke on Herring's behalf, in spite of Herring's poor attendance and performance record.

Malotte said he spoke to Herring about this time off and unsatisfactory work performance (Resp. Exhs. 47 and 48) but "could not get anything through Sylvester." Malotte said he regarded Herring as "his worst employee." According to Malotte, Herring abused break privileges (employees, Malotte explained, were "to be in their area to go to start work when the break ends"), read repeatedly when he had work to do, and would stand around interfering with the work of others, in and out of his own work area. Herring was "uncontrollable" in January 1980. Malotte asserted, "we had a terrible time" keeping Herring in his own area and at work during that time. Malotte stated that at that time Herring carried

union materials around with him "trying to get more people to sign up."

Malotte recalled Herring's last day of work (March 26, 1980). He said Herring returned to his work area about 8:50 a.m. after the meeting in Frazier's office and then went on break at 9 a.m. Malotte said he called Marvin Williams after the break was over at 9:10 and learned that Herring was still out of his area and talking with Sonny Armstrong. Malotte reported to Kindred that Herring returned to his job station at 9:16, and Kindred thereafter discharged Herring in the paint shop. Herring refused to accept being fired and returned to work in his area where he was again told by Kindred that he had been discharged. There was no smiling by Kindred or Malotte, Malotte asserted. Malotte said he had prepared an AVO so Herring could leave the plant with his belongings and explained that he had done so. "And before I finished the complete statement, he turned around with anger on his face, took both his hands open . . . and hit me on the chest . . . and knocked me back about four feet," Malotte reported. Malotte said he just turned around and walked away.<sup>54</sup>

*Personnel Manager Jerry Messersmith*, when called to testify on defense stated that employees are required to show their ID badges on entering the plant and if late they must sign the guard log. Herring, according to Messersmith, gave the guards problems in these respects. See Messersmith's memorandum of February 18, 1980 (Herring did not have an ID badge for guard Sweetan but had the green systems or terminal badge in his possession, Resp. Exh. 50), February 19, 1980 (Herring complained of harassment, threatened a charge and a "punch" for the guard, Resp. Exh. 51), and September 5, 1979 (argument with Moore on entering the plant at 7:10 a.m. on September 5, 1979, after turning off lights, Resp. Exh. 52).

Messersmith was asked about Herring's absences on January 4 and 5, 1980 (following a "company injury" how "in litigation" Resp. Exhs. 47 and 53) and on March 4, 1980 (Resp. Exhs. 44 and 54) and Herring's efforts to collect sick pay for them. Herring claimed, Messersmith said, that a Dr. Doss was supposed to call in for him but that Dr. Doss, when called, disputed that. Herring also claimed, according to Messersmith, that he had called the guard early on March 4 but that the guard on duty (Sweetan) denied receiving such a call.

Messersmith said he showed an employee on crutches how to reach the voting area in 1978, with permission of the Board agent on duty, and that he then left. He said he told all supervisors to stay away from the voting area in both 1978 and 1980. Messersmith identified photographs taken of the voting area in 1980 by the Union (Resp. Exhs. 55-61). He said a voter could enter the voting room only through one door and only from the outside.

<sup>52</sup> Malotte explained that employees are to call their supervisors within 30 minutes of the beginning of their shift and explain why they would not be at work that day. Malotte said Herring had called in late on February 21 and again on March 4, 1980 (at 11:09 a.m.). Malotte stated Herring had claimed to have called the guard early on March 4, but there was no record of it. Malotte said Herring was absent on January 4 and 5 without explanation. He stated on cross-examination that company records show him off work on January 3-5 due to a "company injury."

Malotte also explained during his testimony that he wrote up an EPR (G.C. Exh. 7) on September 17, 1979, because Bobby Clemons had not given at least a day's notice that he was going out of town on personal business. Malotte said he did not object to the fact that the employee's wife had called instead of the employee.

<sup>53</sup> Malotte agreed on cross-examination that Herring was sent home for a half a day on August 23 but that he was later paid for it. Malotte said he removed union stickers from the company-owned locker assigned to Herring "a countless number of times," even though he had told Herring that no material was to be placed on company property. Malotte agreed that Halliburton stickers had also been placed on company property, but he said he removed those too, or had them removed. Malotte said Herring would carry his terminal badge around with him, contrary to instructions. Terminal badges, which are distinct from ID badges, were supposed to be hung near the timeclock, Malotte said, so foremen could use them when employees "called in sick or on voluntary off or whatever the case may be."

<sup>54</sup> Line Foreman Donald Spencer said he witnessed Herring shove Malotte with both hands on the day of his discharge. The Union presented a witness, George January, who said he saw Herring clean his locker out that morning. He said he did not see Herring shove Malotte. There was no showing that January was in the area at the time, however.

Messersmith testified he had never heard Bruce Frazier tell Herring, as Herring had claimed, that he should give up union activities and be a good employee. Messersmith denied telling Herring or any other employee that the Company would move away or refuse to negotiate if the Union came into the plant. Messersmith also denied stating at any meeting with employees, as Ed Jones had testified, that the personnel of the union would prevent the Company from transferring employees around in case of a slowdown. He said he did state that a wage cut could result in case of an extended reassignment, in accord with the existing practice. On cross-examination, he said he never knew an employee to have suffered a pay cut after being transferred to a lower paying job.

*Louis Amann*, sheet metal line foreman, impressed me as a truthful witness. His testimony gave a somewhat different view of the rules that were enforced at the Halliburton plant with respect to eating, smoking, and reading than the one given by Ed Jones, whom Amann supervised. Amann indicated that he had not seen everybody smoking in the paint shop, as Jones had claimed. Amann said he had not seen Jones or anyone smoke in violation of the no-smoking rules. He said he did allow employees to eat snacks—cheese, crackers, candy bars, and sunflowers—that did not interfere with work. Amann said he had not seen employees eating sandwiches or soup during worktime as Jones had asserted. Amann denied that employees in his department were allowed to read nonwork-related materials on the job. He agreed, however, that employees had done so and were disciplined for it.

*Dennis Antle*, an assembler who worked under Wilmer Malotte, testified that he thought the electronic assembly room was a satisfactory place to hold an election and that the 1980 election held there was fair. He said he opposed the IAM campaign and was an active member of the "employees for the employees" group. Antle stated that he circulated handbills and placed material on bulletin boards where prounion and antiunion material could be posted.

Antle said he would leave his work area only if he had business elsewhere and after telling his supervisor. Herring, who worked about a 100 feet away on the other side of a partition, might come to his area for "a clamp, bolt or something," but he also came (usually when Malotte was not around) to talk to other employees, Antle said.

*Thomas J. Merritt* said he worked with Clarence Thomas under Max McKellips as a vacuum blaster. Merritt stated that Thomas would leave his work area, contrary to instructions, and go talk with other employees. According to Merritt, Thomas, as a blast partner, was supposed to watch while Merritt worked inside of a tank but failed to do so. Thomas would always be sleeping when Merritt came out of the tank, Merritt asserted. Merritt said he saw Thomas throw his respirator away and was almost hit by it. According to Merritt, the respirator hit the wall and fell to pieces.<sup>55</sup>

<sup>55</sup> Merritt initially thought he had worked with Thomas for 6 months but apparently did so only for a little over a month. Leadman Max McKellips also testified that Thomas would not stand guard for the protection of his coworker and would leave the work area.

*Charles Lair*, although not an articulate witness, gave damaging testimony with respect to the conduct of Herring, with whom he worked in water test. Lair testified that Herring ate sandwiches "quite a bit" and read newspapers during worktime, contrary to instructions. According to Lair, Herring was frequently late for work, often returning after the end of the break. Said Lair: "... you're supposed to be back just before the whistle blows or be back right as it blows and start back to work," but Herring "would not be there." Lair said Herring would loaf during worktime and would leave his work area to go talk with other employees. Lair said Foreman Malotte gave special attention to Herring and would go back for Herring.<sup>56</sup> Herring placed union stickers on company property "at least 3 days in a row" contrary to instructions.

Lair said he recalled the day Herring was terminated. Herring left with Malotte at 8:30 that morning, returned to his work area before breaktime, and handed a paper to Inspector Kenny Cobb, Lair said. Herring took the paper back and left when the break whistle blew. He did not return until "at least 5 minutes" after the break had ended, Lair stated. Shortly thereafter, George Kindred arrived and took Herring to the office.<sup>57</sup>

*Denny Anderson*, a toolroom attendant at Halliburton (and apparently an observer for the Company at both elections), testified that he, along with Haynes and Herring, helped Board agents summon employees to vote in the 1978 and 1980 elections. Anderson said he, as well as the Board agent, had instructed Haynes to avoid conversations with employees at the 1980 election and that Haynes complied with instructions "up to a point." Anderson agreed that the 1978 election was held close to the work area of Ray Guinn, who was a supervisor at that time, but he said there were no foreman around "during the voting period."<sup>58</sup>

*Bruce Frazier* on being recalled as a defense witness said it took only about 4 minutes to read his memorandum of March 26, 1980, to Herring that morning. He said the door was open but knew of no record being made of the meeting except for his own notes "of the events of the day." Frazier said he had spoken to Herring three or four times, but had never stated to him—or any employee—that he should quit union activities. He said he had seen handbilling at the front entrance but never located himself so as to watch it. Frazier also testified that he instructed all supervisors to stay away from

tection of his coworker and would leave the work area. Jerold Kuehn testified that when acting as a temporary supervisor he spent 40 minutes looking for Thomas and found him with another employee hiding in a tank. Kuehn said he "caught him asleep three times in one week."

<sup>56</sup> Lair said his foreman instructed him that employees were to stay in their work area and that "if we needed something we were supposed to let him know about it."

<sup>57</sup> Lair also gave damaging testimony against the Company. On cross-examination, Lair testified that Malotte on one occasion asked him if Herring had asked employees, including himself, to sign union cards. Malotte stated to him, Lair testified, that "he did not think we needed [a union]," and Lair agreed with him. Lair indicated he did not want to sign a card.

<sup>58</sup> Ray Guinn himself testified that his desk was "very close" to the breakroom entrance in 1978 at the time the election was held there but that he had stayed away at the time of the voting as instructed.



the voting area at the 1978 and 1980 elections and that as far as he knew the instructions were followed.

Ray Sharp, material foreman, testified that he had overheard a comment of Barbara Moore, an employee assigned to work under Leo Dodson, to two employees in his office, Floyd Eubanks and Kandi Smith. Sharp said Moore had referred to dissatisfaction in the plant at the time and that he offered the comment as he went out the door that they could "stop some of the discontent [and] they could all vote no." Sharp said Moore stated at the time she was voting for the Union although he had heard "comments both ways from her."

Sharp testified that he supervised Sonny Armstrong, a section dispatcher who drove a forklift. According to Sharp, Armstrong was free to move around in the plant in performing his job but was supposed to return to a waiting station when through with an assignment. "Sonny could not hear the page," he said, and other supervisors had called Sharp "a number of times . . . to get [Armstrong] out of their area" where he would be visiting. Sharp said he treated employees the same whether they wore union insignias or not.<sup>59</sup>

Donna May Oestman, who works in the paint shop office and in the paint shop itself, testified that she witnessed Herring place an IAM sticker on a Halliburton toolbox contrary to instructions given. The vending machines near the paint shop would be covered with union stickers after Herring and Sonny Armstrong would visit them, she said.

Oestman recalled that another employee, "Lark" Thompson, had brought into the office a part of a respirator one day. She said she did not know at the time that the respirator had been assigned to Clarence Thomas. Oestman also recalled that she had seen Thomas with Armstrong that day and at a later time Thomas "appeared to be mad" with Don Spencer and had "stomped off."

Leadman Max McKellips, who worked with Clarence Thomas, testified that Thomas and Sylvester Herring would visit each other in their respective work areas during worktime every day. McKellips indicated that employees in his area worked in pairs, and none of them was to leave without getting a replacement for safety reasons. He said he had observed Thomas leave another blaster without protection.

McKellips also testified that both Herring and Thomas would eat on worktime in disregard of instructions given. Both would eat sandwiches on the job, and Herring would eat cereal. Said McKellips: ". . . you could tell that [Herring] did not eat breakfast before he came to work."

McKellips stated that on the day Thomas was discharged McKellips had been told by Foreman Don Spencer to inform the blasters that lunch and other breaks would have to be rescheduled, as was done "quite

frequently," because the Company was behind in its work. The breaks were not to be eliminated, McKellips stated, but he was not initially informed when they would occur that day. No one complained, according to McKellips, except Thomas, who said, ". . . by God, I am not going to that." McKellips testified that he told Thomas to go talk to Spencer and that Thomas left, presumably to see Spencer.

Floyd Meek testified that as line foreman in charge of inspections he would work all over the plant under supervision of Joe Galey. Galey would sometimes wait in the guardhouse to intercept him, he said, and he could have done that in January 1980 when the handbilling was occurring.<sup>60</sup>

Meek indicated that he would allow an employee to eat a snack, such as a candy bar or chips, that would not interfere with the work but nothing else. Meek said he made it understood in his area, by speaking to Jim DeWeese about reading a novel, that there would be no reading on the job.

Gerry Hire said he supervised 32 employees (when working the day shift), including Carl Robert Haynes, in the tank shop. He indicated employees might need an inspector every 5 hours or more, depending on the job they were working on, and could leave the work area to find an inspector after paging for one. Hire said Haynes and Charles Roark, who worked about 100 yards away from Haynes' work station, would visit each other and talk during worktime. He said he did not know what they talked about, but he told them they needed to stay in their own area. Hire said he assumed Haynes was a union supporter as he wore a union cap and coat. Hire asserted, however, that he treated his employees the same whether they wore union insignias or not.<sup>61</sup>

Alton Phelps, the "No. 2 man" at the Halliburton plant in Coffeyville,<sup>62</sup> appeared as a defense witness and, after explaining the operation of the plant's merit increase program and computer system, told of incidents involving three Halliburton employees—Sylvester Herring, Clarence Thomas, and Joe Robbins.

Phelps identified a document (Resp. Exh. 68) which set forth the merit increase program and stated, as previously explained by Leo Dodson, that it was common practice to inform employees of their "off time" as it would affect the effective date of scheduled salary increases (e.g., 2-week delay if more than 60 hours in a 6-month period, 4 weeks delay if over 120 hours).<sup>63</sup> Ac-

<sup>59</sup> Joe Galey, who took over the plant manager position from Bruce Frazier in late 1980, later testified that he recalled an occasion when he observed the distribution of union literature near the guard office. He said he was in the guardhouse to catch his foreman, Floyd Meek. Galey said he did not recall any of the employees who were distributing the literature.

<sup>61</sup> Hire denied allowing Steve Montgomery to move around to talk against the Union during working hours. He said Montgomery "repaired all of our X-rays after they went to tack-up" and moved around the plant. He said he did not know that Montgomery spent any worktime campaigning against the Union.

<sup>62</sup> Phelps was shop superintendent until he was named assistant plant manager in late 1980.

<sup>63</sup> The delay in receiving merit increases is different for employees in their 6-month probationary period (Resp. Exh. 68).

<sup>59</sup> Sharp also explained that he had helped Shirley Bond prepare G.C. Exh. 3, a tabulation of "incidents" involving damage to Halliburton property. He indicated that James Todd, who had worked under him as a forklift driver and a crane operator, was "not particularly" at fault for the accidents in which he was involved with one possible exception. Todd was transferred at his own request and not, as the tabulation indicates, "due to accident rate," Sharp said.



cording to Phelps employees are evaluated every 6 months, and they are aware of that fact. Phelps also explained that the plant's computer system was used in preparation of the payroll and in monitoring the cost of manufacturing its products. The validity of the information obtained from the computer, Phelps pointed out, is dependent upon the employees inserting appropriate cards with their green "transaction" (terminal or systems) badge.

Phelps said he saw Clarence Thomas away from his work area on one occasion. "He had his head down and his eyes were closed" but denied being asleep when Phelps spoke to him. Phelps said he told Thomas that "he should be observing for his buddy" who was blasting. Phelps said he did not know that Thomas was a union supporter; he recalled Thomas wore a red bandana, not a union cap. Phelps said he was present when Pete Robnett told Thomas that he was being terminated for failing "to remain in his work area and destruction of company property."

Phelps testified that he received many complaints from Wilmer Malotte about Herring. Phelps acknowledged that he knew Herring was a union supporter. Most of the complaints concerned Herring's failure to remain in his work area, according to Phelps. Malotte had recommended that Herring be fired more than once, Phelps recalled. He recalled one occasion that it was reported that Herring had cursed both Malotte and George Kindred. Phelps said Herring had consumed much of his time. According to Phelps, Herring's disciplinary problems would slacken up just before an increase was due but would recur after the increase had been approved.

Phelps also identified a memorandum (Resp. Exh. 69) that he had written the day after Herring had come to his office to complain about not receiving sick pay for his absence on March 4, 1980. Phelps said he explained that Herring should not be paid for that day because he had not called in "until after the shift was half over," which was after Herring had driven his son to another city some distance away.

Phelps confirmed that he had overruled temporary supervisor Bill Trott and Foreman Wilmer Malotte and allowed Herring to take time off to go to Las Vegas. Leadman Herman Newton appeared with Herring, he recalled. After requesting Herring be allowed to go, Newton turned to Herring and got him to promise to be a "better hand" on his return if allowed to go. Phelps also confirmed that he learned later from Shop Foreman Leo Carter that Carter had not told Herring that he could take the time off as Herring had claimed.

Phelps recalled that he and Robnett met with Herring in September 1979 upon Herring's return from a 3-day suspension. At the time Herring had his green transaction badge—with a sticker on it—with him, in disregard of instructions that he was to leave it at the "transaction machine" in the plant. Phelps said he told Herring at the time he was not being singled out, as Herring was asserting, but told him that "you will terminate yourself" if you continue to break the rules.

Phelps said he could remember being at two meetings with Frazier and Herring. He stated that he never heard Frazier tell Herring that he "should quit your union ac-

tivities" and become a good employee as Herring had asserted.

Phelps also testified about Herring's last day of work. He said he spoke to Herring after the meeting in Frazier's office around 10:30 and again after 11 a.m. He testified that Herring initially would not leave the plant without his paycheck but later agreed to leave and get his money at the Western Union office if told his exact pay and the amount of vacation due him. Herring complained before leaving that he had not been told why he had been terminated, but Phelps said he, as well as Kindred, had indicated to Herring that Herring had been discharged for returning to his work area late that morning.

Phelps agreed that on one occasion he had told Joe Robbins to return to his own work area and that he later told Robbins' foreman, Ray Guinn, of that fact. Phelps said he spoke to Robbins again about the matter: ". . . I went back by and told Joe I was a little disappointed that he told me he was waiting on a job when actually he had a job to do." Phelps acknowledged that Robbins was with Herring when he told Robbins to return to his area, but he indicated his handling of the matter was not affected by the fact that Robbins had been sitting with Herring rather than anyone else.

*John Croy*, a sheet metal supervisor who also worked in the paint shop when working the night shift,<sup>64</sup> testified that he would see Herring when Herring worked in water test. According to Croy, Herring came through the area "several times" to take his break early. Croy said he also observed "several times" that Herring was late in returning to his work area after his break. In addition, Croy testified: "There have been times when I have left the shop for various reasons and I would come back and he would be in the shop visiting with people." Added Croy: "When he saw me enter the shop he would leave."

*Donald Spencer*, a first-line supervisor in the paint shop, identified a number of memorandums documenting events involving Clarence Thomas during his employment at the Coffeyville Halliburton plant in 1979 (Resp. Exhs. 2-7, 9-14; G.C. Exh. 2). Most of the memorandums refer to Thomas being out of his work area, although some refer to other matters (Resp. Exh. 3, Thomas found in tank with Larry King April 2, 1979; Resp. Exhs. 9 and 11, accumulation of nonproductive or "off time").

Spencer testified that he told McKellips on the morning of September 17, 1979, that it would be necessary to "rotate our breaks and our lunchtime" that day, as had been done on other occasions. Spencer said he later saw Thomas that morning out of his area talking with Sylvester Herring and Sonny Armstrong and sent Thomas back to his work station as "he was a safety factor." Spencer said he then investigated the respirator incident—talking with Donna Oestman, Lark Thompson, Tom Merritt, and Clarence Thomas. Spencer said he learned that the respirator found on his desk belonged to Thomas after talking with Merritt. Thomas, who had asked the Com-

<sup>64</sup> At the time of his appearance, Croy was working at the Halliburton facility in Duncan, Oklahoma.

pany to furnish him with a respirator, initially denied knowing where his respirator was, according to Spencer. Spencer said he presented the facts to his "boss," Pete Robnett, and recommended that Thomas be dismissed for failing to stay in his own area and for deliberate destruction of company property. Robnett agreed and told Thomas (after a meeting attended by Alton Phelps, Jerry Messersmith, Spencer, and Thomas) that he was being discharged for "failure to stay in his work area and for the deliberate destruction of company property." Spencer denied ever seeing Thomas wear a union hat or carry a union book. He also denied ever telling Herring that he had to "get rid of Thomas."

Spencer also testified about memorandums he prepared concerning Bobby Clemons being late and absent (Resp. Exhs. 70, 71, and 72). He said he had explained to Clemons, with reference to Respondent's Exhibit 71, that he told Clemons that prior arrangements must be made before going out of town.

Spencer said he saw Wilmer Malotte approach Herring on his last day of work with an AVO, which would allow Herring to take his personal gear by the guard, and observe Herring put both hands up and shove Malotte back.

Spencer testified that he had told Herring not to talk to employees in the paint shop during worktime. Spencer agreed that he had told two of his employees, Daniel Webber, a temporary supervisor, and Barbara Stewart, not to visit with Herring during worktime.

Spencer said he had seen Herring eat from a bowl during worktime but no one else. He agreed on cross-examination that he had also seen other employees eat crackers, candy bars, and sunflower seeds on the job. Spencer stated that he had seen Herring read a union organizing book on the job but did not speak to him about it as he was not Herring's supervisor.<sup>65</sup> Spencer said he had spoken to four or so others about reading on the job, however. He said he had also reminded two other employees not to smoke in a no-smoking zone of the plant.

Shirley Anne Bond, secretary to the Halliburton plant manager at Coffeyville, identified a series of tabulations which she and other Halliburton employees prepared after reviewing company documents for the period 1974 (the year the plant opened) to July 18, 1980, in response to subpoenas served on the Company by the General Counsel and the Union.<sup>66</sup> The tabulations list the names of employees who were written up during such period for the following:

1. Failing to call in (Resp. Exh. 81).
2. Overstaying break (Resp. Exh. 82).
3. Loafing in work areas (Resp. Exh. 83).
4. Using disrespectful or vulgar language to supervisors (Resp. Exh. 84).
5. Interfering with the work of other employees (Resp. Exh. 85).

<sup>65</sup> However, Spencer wrote an AVO on January 30, 1980 (the day of the second election), which stated that Herring and Stewart read the union committee book between 9:25 and 9:40 a.m. that day.

<sup>66</sup> Bond identified two other tabulations: One (Resp. Exh. 79) lists the names of employees whose wage increases were delayed because of absences between January 1979 and June 1980, and the other (Resp. Exh. 80) lists employees written up for absences between March 1979 and July 1980.

6. Leaving work area (Resp. Exh. 86).
7. Refusing to perform assigned work (Resp. Exh. 87).
8. Excessive tardiness and absences (Resp. Exh. 88).

### III. DISCUSSION AND CONCLUSIONS

This proceeding involves the legality of Respondent suspending Sylvester Herring for 3 days on September 5, 1979, its later warning of March 26, 1980, to him and his discharge on the same date, the discharge of Clarence Thomas on September 8, 1979, and the alleged discriminatory treatment of Bobby Clemons (by issuing a warning to him) and Barbara Moore (by issuing a warning to her and by withholding a wage increase due her). A number of 8(a)(1) charges and the Union's 21 objections to the election held on the Company's premises on January 30, 1980, are also before me for disposition.

#### A. The CA Cases

##### 1. The charges involving Sylvester Herring

Halliburton was obviously opposed to the Unions' coming into its Coffeyville plant. A review of the record persuades me, however, that the challenged disciplinary actions taken against Herring were imposed by the Company for just cause and not because of any concerted activities on the part of Herring. Herring's union membership and activities on its behalf did not shield him from being properly disciplined for sound business reasons. "The rule is that if the employee has behaved badly it won't help him to adhere to the union . . . ." *Neptune Water Meter Co. v. N.L.R.B.*, 551 F.2d 568 (4th Cir. 1977). It was not enough for the General Counsel to show Respondent had union animus and that Respondent was aware that Herring was an "extremely visible, active union adherent." Here Respondent produced convincing evidence that the disciplinary actions taken against Herring were motivated by good business reasons and that it would have taken such actions in the absences of Herring's protected conduct. See *Central Freight Lines, Inc.*, 255 NLRB 509 (1981); also *N.L.R.B. v. Nevis Industries*, 647 F.2d 905 (9th Cir. 1981), approving the Board's recently articulated *Wright Line* rule. [*Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).]<sup>67</sup>

That Herring behaved badly as an employee of Halliburton is beyond dispute. The record demonstrates that he flagrantly disregarded company rules. He regularly ate sandwiches and cereal on the job, contrary to instructions. He read newspapers and other nonwork materials on worktime. The record indicates that he left early many times to go on break and was frequently late returning to work after it was over. He repeatedly left his area during worktime to go visit with other employees who were called upon to perform other tasks. He failed to call in timely when he would be absent as the

<sup>67</sup> The fact that an employer may wish to terminate an employee because of the way he engages in protective activity does not, of itself, establish that a discharge was unlawful. "If the employee would have been discharged, in any event, the circumstance that the employer welcomed the opportunity to discharge does not make it discriminatory and therefore unlawful" (citing *Klate Holt Company*, 161 NLRB 1606 (1966)). See also *Golden Nugget, Inc.*, 215 NLRB 50 (1974).

rules required. He was uncooperative with plant guards, refusing to show his ID badge, refusing to sign the guard log when entering late or without his ID badge and by turning over trash barrels. He placed stickers on company property, contrary to instructions. He argued with, and was disrespectful to, his superiors. Other employees complained of being assigned to work with him because he failed to do his share of work and used abusive language. Herman Newton, a leadman for the Company but a friend of Herring, indicated that he thought Herring was at fault for his problems with Halliburton and that the Company had been fair with him.

There was testimony that some Halliburton employees were allowed to eat sunflower seeds, candy bars, or other snacks. There was testimony that employees could leave their work areas to go to the restroom and for other personal reasons without getting permission of their supervisors. (Herring was always allowed to go to the restroom.) There was also testimony that Herring was watched more closely than other employees. But such evidence did not make the Company's treatment of Herring disparate or pretextual. Herring's work habits were quite different from, and his misconduct much more flagrant than, any other employee. Herring's behavior justifiably prompted Halliburton's management to make special efforts to try to keep Herring in his own work area and working during worktime.

Specifically, with respect to the discriminatory charges involving Herring, I find (a) Herring was suspended for 3 days on September 5, 1979, because he left his work area without permission to go to the parking lot to turn off his car lights;<sup>68</sup> (b) Herring was given a written warning by Plant Manager Bruce Frazier at approximately 8:30 a.m. on March 26, 1980 (which was read to him), because the Company had determined that it must face up to the problems created by Herring's numerous violations of company instructions and that there should be no doubt that Herring should know what was expected of him; and (c) Herring was discharged by George Kindred around 9:40 a.m. on March 26, 1980, for failing to return to his work area promptly at the end of his morning break period, one of the violations specifically referred to in the written warning that it had been read to him only about an hour earlier. The record persuades me that Respondent would have taken each of these disciplinary steps irrespective of Herring's protected activities. These allegations involving Herring will, therefore, be dismissed.

With respect to the 3-day suspension given to Herring, the record persuades me that Herring arrived at work late on September 5, 1979—at 6:50 a.m., the time the guard entered, in sequence of the other time entries made on the guard's log, after erasing Herring's incorrect entry of 6:40. Herring did reach his work area by 6:55 a.m. as Herring's supervisor, Wilmer Malotte, testified but left it to return to the parking lot to extinguish his car lights without ever seeking permission of his supervisor. He passed through the gate at 7:07 a.m. on his way out and again at 7:11 a.m. on his way in, as the Company's records show, and became involved in an argument with

the guard on duty, which brought Personnel Manager Messersmith to the scene.<sup>69</sup>

The warning memorandum was admittedly unusual, but Herring presented an unusual disciplinary problem to the Company. Both Frazier and Malotte considered Herring their "worst employee" with good reason. Shop Superintendent Phelps stated that Herring took up more of his time than any other employee.

Frazier prepared the March 26 memo after receiving numerous complaints about Herring's behavior and review of his personnel record. He also consulted with the Company's legal department. On March 26 he called Herring into his office, and, in the presence of other plant officials, handed Herring a copy of the memo. Frazier read it to him and explained that he would be terminated if there were further violations. Herring was not allowed, understandably, to discuss the items mentioned in the memo or argue their merits, but Herring said he understood the memorandum and that further violation of instructions would result in his discharge.

The meeting in Frazier's office on March 26 took about 10 minutes and, contrary to his testimony, he was able to return to his work area before the morning break whistle sounded at 9 a.m. Herring went to trailer assembly (marked "C" on Union's Exh. 1), some distance away from his own work area (marked "B") to take his morning break with Sonny Armstrong and Fred McDaniel. It is difficult to understand why Herring would violate company instructions so soon after being warned, but he did so by failing to return to his work area at the end of the morning break. Herring had to be aware, contrary to his testimony, that he was due back on the job when the break whistle sounded at 9:10 a.m., and his failure to be there indicates defiance on his part. The credible evidence, including the testimony of Marvin Williams, Charles Lair, George Kindred, and Wilmer Malotte, clearly established that Herring had overstayed his break on the morning of March 26.

Contrary to Herring's testimony, I am satisfied that Kindred as well as Shop Superintendent Phelps made it clear to Herring on March 26, 1980, as they both testified, that he had been terminated because he was late in returning to his work area after the morning break. Herring continued to be difficult to the end. He agreed to leave the premises only after being assured that he would be paid the exact amount due him that day and, in leaving, shoved his foreman, Wilmer Malotte, backward.

There was a basis for each of the items listed in Frazier's March 26 memo as Frazier explained, and I satisfied that the warning letter would have been issued irrespective of his union activities.

Herring did refuse to perform work assigned to him as item 1 states. Herring conceded as much, agreeing that he had a "go around" with Herman Newton about putting fittings in a horizontal tank. This occurred on December 20, 1978, and 7 days later he again declined to work outside (because of a toothache, he said) or report

<sup>68</sup> Herring had been given a 1-day suspension on February 9, 1979.

<sup>69</sup> It is apparent that Herring did not sign the guard's log as he went out the gate to the parking lot or when he returned and that the guard on duty, Hamilton Moore, made the log entries covering both events (Resp. Exh. 17).

to Shop Foreman Leo Carter as directed by his foreman (Resp. Exhs. 31 and 32).<sup>70</sup>

Numerous witnesses—supervisors and other employees (e.g., McKellips, Mitchell, Pope, Lair) testified credibly that Herring would leave his work area during worktime daily for reasons unrelated to his work and interfere with the work of others as items 2 and 3 state.

The record establishes that Herring provoked arguments at the guard office by refusing to show his ID badge and by refusing to sign the entry log as items 4 and 5 state. Herring's claim that he was singled out for checking of his ID badge, a rule always in effect at the Coffeyville Halliburton plant, is rejected. Nor was he singled out for signing the guard log as he claimed. The testimony of Sweetan and Messersmith persuasively contradicted such assertions of Herring.

The testimony of employee witnesses indicates that it was understood that they were required to call in at the beginning of their shift, or within a few minutes thereafter, if they were not able to be there that day. Herring conceded on cross-examination that there was an occasion when he failed to call in a timely manner as item 6 states. The documentary evidence satisfies me he failed to communicate with any plant official in a timely manner on two occasions in January and again on March 4, 1980. Herring's claim that he called in and spoke to the guard at 6:30 a.m. on March 4 was not persuasive.

As for item 7, Lair and Oestman testified that they had seen Herring place union stickers on company property. Herring himself admitted that he had placed stickers on the ID badge and toolbox or locker which the Company had provided.

Herring himself testified that he read materials unrelated to work, including newspapers and union materials, and ate sandwiches and cereal on the job. The Company did forbid these practices, and Herring was bound to know it. Herring's proclivity for eating and reading on the job was well known among employees at the plant. The Company did forbid these practices, and Herring unquestionably knew it. That some employees were allowed to eat sunflower seeds, candy bars, or other "snacks" that did not interfere with their work is of no moment. The record indicates that no other employee violated the rules referred to in items 8 and 9 in the manner that Herring did.

The General Counsel suggests in his brief, as Herring himself testified, that Herring was never disciplined or warned in any way about overstaying his break period as item 10 indicates until the day of his discharge. The record indicates otherwise. Senior Production Manager Bill Williamson, an impressive witness who documented Herring's absence from his work on the morning of July 10, 1979, when he was assigned to temporarily supervise Herring, testified that he specifically told Herring to "be back in his work area after his lunch period and after his breaks." Herring's foreman, Wilmer Malotte, also testified that "for awhile it was pretty near an everyday occurrence" for him to speak to Herring about getting back to work after his break. Other employees (e.g., Croy and Lair) observed that Herring abused his break periods.

<sup>70</sup> Respondent points out in its brief (citing Resp. Exh. 87) that other employees have been terminated for refusing to do assigned work.

There can be no question that Herring, who chose to take his breaks in a place some distance from his own work area, was aware that he was under a duty to be back at his work station at the end of his breaks.

Shop Foreman George Kindred testified credibly that at a meeting he had with Herring on March 20, 1980, Herring cursed the guards (calling them "f—kers") spoke of the "God damn foreman," and then, when asked to leave the office, told Kindred, "Go f—k yourself." Even Herring's version of the incident, if credible, would have been abusive. In a meeting with Kindred and Malotte held the previous month Herring had told Kindred that "he didn't have to prove a God damned f—g thing to him or anyone else."

While asserting that his job called for him to stand around during slack periods, Herring agreed that Alton Phelps counseled him for loafing in his work area as item 12 states. In any event, there was credible testimony (of Malotte, Poe, and Lair) that there was almost always work to be performed in Herring's area and that Herring spent a considerable amount of time visiting with others.

Herring agreed that Plant Manager Frazier spoke to him about smoking "where everybody else was standing smoking . . ." Item 13 refers to this incident. I credit Frazier's testimony that he pointed out to Herring that no-smoking signs were nearby, and I reject Herring's assertion that others were smoking in the area.

Herring testified that he, accompanied by Vernon Stout, turned over two barrels situated near the plant gate and refused to turn them back over as requested by the guard on duty, Ron Sweetan. Such testimony essentially confirms the accuracy of item 14, whether there was any trash spilled or not. I do credit the testimony of Sweetan that Herring dumped over a barrel containing trash that he (Sweetan) later picked up. Extra barrels had been placed at the gate to collect discarded handbills.

Herring admitted his job performance had been mediocre, as item 51 states, on an occasion. Herring was undoubtedly a competent employee when he applied himself, but his misconduct, referred to in the numerous AVOs and EPRs issued, show he was not a good, dependable worker.

Herring agreed that he had been told that he had been excessively absent and tardy as items 16 and 17 assert. The record indicates that he was counseled on November 20, 1978, and January 15 and May 23, 1979, about his absences and told at other times that his time off had delayed raises for him. The record also indicates late arrivals on the part of Herring, specifically on July 26, 1978, and February 21 and 28, 1979.

## 2. The charge involving Clarence Thomas

Thomas acknowledged that he had received warnings for absences, tardiness, and for being out of his work area. As a blaster he was called upon to stand guard outside of a tank while his partner worked inside, but he would often sleep or wander off.

Shortly after he arrived at work on the morning of September 17, 1979, Thomas learned that his lunch and other breaks were being rescheduled. He told his lead-

man that "by God" he would not agree to such changes. He was released to go talk to the foreman, Don Spencer, but went instead to visit with Herring and Sonny Armstrong. He was seen by his foreman who sent him back to his own work area. When he returned he threw his respirator down in disgust, causing it to come apart, and left the rubber mask part to remain on the floor. The mask part was soon found and taken to Spencer's office. When asked where his respirator was, Thomas said he did not know. Spencer investigated the matter and recommended to his supervisor, Pete Robnett, that Thomas be discharged for failing to stay in his area and for the deliberate destruction of property. The recommendation was approved, and Robnett advised Thomas the next day that he was being terminated for those reasons.<sup>71</sup> The record persuades me that Thomas was discharged for the reasons stated—deliberate destruction of property and failure of Thomas to stay in his work area—and no other. There was no credible evidence that Respondent had any knowledge of Thomas' union activity, an indispensable element of the General Counsel's case on this issue.

### 3. The Bobby Clemons' warning

The General Counsel and the Union contend that the warning issued to Bobby Clemons on September 17, 1979, was issued because of his union activities and was therefore unlawful. The charge was not sustained.

The warning, written up in the form of an EPR, reads in part:

Bobby's wife called in 9-14-79 said they were going out of town on business. I was unable to get Bobby on the phone. Bobby never made any advance plans to me to be off this Friday of 9-14-79. He has done this to Don Spencer earlier this year.

Consistent with the language used in preparing the EPR, Malotte testified that the warning was issued "because he did not give advance warning to let me know he was going to be off a particular day." Malotte also explained that employees were to give advance notice for taking off for personal business, and other employees (Stout and Barnett) indicated that they understood that.

It is evident that Malotte's complaint was that he had not been timely advised of the fact that Clemons was going out of town—not that he learned it from his wife rather than from Clemons himself. Clemons conceded, in effect, on cross-examination that in discussing the matter with Malotte the point of the discussion was that he should have made advance plans instead of calling in on the same day he was to be away. It is thus apparent that the General Counsel misunderstood the basis of the

warning. The testimony that other persons had called in for employees was not relevant.<sup>72</sup>

### 4. The charges involving Barbara Moore

The events of January 23, 1980, are particularly relevant to the charges involving Barbara Moore. There was testimony that she had spoken for and against the Union at different times, but on that date she had indicated in the steel yard office that she would be voting for the Union. She entered the office and joined in a discussion "about the tension that was in the plant." She identified Kandi Smith and Floyd Eubanks, a clerk and dispatcher, as being present, along with the material foreman Ray Sharp. Foreman Sharp suggested that employees could "all vote no" and went out the door.

Later, on the same day, Moore, along with 20 or so other female employees, met with Personnel Manager Messersmith in one of his "information meetings." She raised a question about the authority of the Union to call a strike, and Messersmith indicated he would look into it. Still later in the day, her foreman, Leo Dodson, spoke to her and, as stated in the EPR given her on that date (G.C. Exh. 8), explained that she had accumulated 60 hours of "off sick time" since November 18, 1979, which would operate to delay the effective date of her next raise. Dodson said he regularly advised employees that their absences would affect their raises and that he prepared written notices when they had accumulated 40, 60, and 80 hours of off time. Dodson claimed that he did not know whether Moore favored the Union or not and that he spoke to her on January 23 as he had not been able to do so earlier because he had been on vacation. Moore received a wage increase, after a 2-week delay, effective June 1, 1980 (Resp. Exh. 28).

Shop Superintendent Phelps and Leo Dodson explained the operation of the plant's merit increase program and there is no evidence—and no contention—that the pay raise given Moore on June 1, 1980, was due her earlier or that it was reduced in any amount. However, there remains the question of whether the warning issued to Moore on January 23, 1980, was because of her union or other concerted activity.

Admittedly the timing of the writeup was suspect if Moore's original version of her meeting with Dodson on January 23 were to be credited. She had stated in part:

... and he said, "Sit down," and he said, "I hate to do this to you, but I've got to. I've got to write you up at 40 hours, at 60, and again at 80, and I'll let you go till 40" and he said, "There's no doubt in my mind that you were sick, and I know you weren't trying to screw the company out of any money, but I've got to write you up."<sup>73</sup>

She later testified, however, that she was aware that at least "in some cases" (Ed Robertson for one) illness and

<sup>71</sup> The Union argues it is significant that no other employee was ever discharged "for alleged destruction of company property" and that others have "caused substantially more damage to far more expensive equipment." Robnett said, however, he was not aware of "willful" destruction of company property by another employee.

The General Counsel cites the testimony of Herring saying that Spencer had told him that he had to "get rid" of Thomas. Spencer denied making such a statement, and he was a more credible witness than Herring.

<sup>72</sup> Again, it was not established that the Company knew that Clemons was a union supporter. It was not enough for him to testify that he attended union meetings and worked as an organizer.

<sup>73</sup> The phrase, "I'll let you go till 40," may be an error in reporting. In any event, it makes no sense as Moore had already accumulated well over 40 hours.

other voluntary time off had delayed raises and that Dodson did explain correctly that amount of time she had taken off. She then said she knew the Company wrote up employees for 80 hours but not for 60. The record does not persuade me that Dodson wrote up or spoke to Moore on January 23 because of her pronoun statement to Foreman Sharp or any other protected concerted activities. Employees were regularly written up for taking voluntary time off.<sup>74</sup> I credit Dodson's testimony that he did not know whether Moore favored the Union or not and that there was nothing unusual in advising her of the amount of off time that she had accumulated. The charges involving Barbara Moore will be dismissed.

##### 5. The independent 8(a)(1) charges

Section 8(a)(1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights—which include “the right to self-organization,” “to bargain collectively through representatives of their own choosing, and to engage in other concerted activities. . . .” Section 8(a)(1) prohibits coercive interrogation of employees about their union sentiments, warning of the futility of union organization, threatening plant closure and reprisals for engaging in union activities, and creating an impression that union activities are under surveillance by the employer. See, for example, *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969); *Sturgis Newport Bus. Forms v. N.L.R.B.*, 563 F.2d 1252 (5th Cir. 1977); *N.L.R.B. v. Standard Forge and Axle Company*, 420 F.2d 508 (1969), cert. denied 400 U.S. 903. An employer may tell his employees of his views about unionism, but in doing so he may not communicate “a threat of reprisal or force or promise of benefit.” Any prediction he makes as to the effect of unionization on his company “must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization.” *Gissel, supra*. “[T]he test for an 8(a)(1) violation is whether questions, threats or surveillance tend to be coercive, not whether the employees are in fact coerced.” *Sturgis Newport, supra*.

Paragraph 5 of the complaint in Case 17-CA-9204 alleges that through Foreman Don Spencer Respondent violated Section 8(a)(1) of the Act on August 2, 1979, by ordering “an employee” not to discuss the Union with other employees, and (2) by creating an impression of surveillance of employees' union activities. The employee involved was Sylvester Herring.<sup>75</sup> As proof of these allegations, the General Counsel relies on Herring's version of a conversation he said he had with Spencer on August 2, 1979. Herring testified:

. . . Mr. Spencer came up to me and stated to me that he would like me to stay away from his people. And I asked him why should I have to stay from his people, that I did not go off in there to talk to his people. They came to mine and talk to me.

Mr. Spencer stated to me that it was bad for me talking to his people. That if “high pockets” came through the door and saw me, that it would be pretty rough on him and his people. He stated to me that he knows that a supervisor is watching me, everybody was watching me. That my name came up in his office all the time that he knew I was not doing anything wrong because he sees me myself. And he stated to me that if I mention this again, that he would deny it.

Herring said Spencer identified Malotte as being “high pockets.”

Spencer said he did tell Herring to stay away from his people but that the incident did not occur in Herring's work area. According to Spencer, Herring was visiting in the paint section by the rolling equipment area at the time. “I just pulled him aside and asked him to please refrain from doing so and if he wanted to talk to them, to do it on break and at lunchtime.”

Herring's testimony has some plausibility. I doubt that he coined the nickname for Malotte which Herring said he learned from Spencer. But the appellation could have been used in any conversation. More important, I think it unlikely that Spencer spoke to Herring in his own area, as Herring claimed. The record suggests that Herring frequently visited other work areas and interfered with work of others. It is probable, I believe, that Spencer would have talked to Herring on such an occasion. In short, I find Spencer's testimony more credible than Herring's.

While I find the evidence offered in paragraph 5 of Case 17-CA-9204 did not sustain the charge, I do hold, as discussed under Objections 1, 3, and 5, *infra*, that Respondent did unlawfully create an impression of surveillance of employees' union activities. Such finding is sufficiently within the pleadings of this charge as well as the allegations contained in paragraph 5(h) of Case 17-CA-9441.

The General Counsel has briefed some of the 8(a)(1) charges contained in Case 17-CA-9441 under the caption “Other conduct violative of Section 8(a)(1).” Paragraph 5(a) alleges that Halliburton Officials Phelps, Malotte, and Dodson, in mid-November 1979, directed an employee not to leave his work area without permission in order to restrict the employee's ability to discuss the Union. The Union in its brief states that the incident referred to in this paragraph “actually occurred on July 10, 1979, when Herring was reported by Supervisor Leo Dodson to be out of his assigned work area [see Resp. Exhs. 16, 35, and 36].”<sup>76</sup> I am convinced that Herring was out of his area approximately one-half hour on the day in question and that Bill Williamson,<sup>77</sup> on that day,

<sup>74</sup> Citing Resp. Exh. 80, Respondent points out that over 100 employees were written up for taking voluntary time off during the 17-month period preceding the hearing. The exhibit indicates Walter Reed was also “written up” on January 23, 1980.

<sup>75</sup> Par. 5(h) of the complaint in Case 17-CA-9441 alleges similar conduct on the part of Spencer in October 1979.

<sup>76</sup> The General Counsel's brief refers to the incident at the top of p. 7.

<sup>77</sup> Williamson, an impressive witness, testified that he did not know Herring was a union supporter at the time.

acting in the absence of Shop Foreman Robnett, for good business reasons—unrelated to any of Herring's union activity—directed Herring, at a meeting attended by Herring, Phelps, Dodson, Malotte, and Messersmith, to thereafter stay in his own work area (except for use of the restroom in his area) unless prior permission to leave was obtained from his supervisor. The direction Williamson gave to Herring apparently placed him under a restriction that had not been applied to any other employee, but his work habits provoked it. The restriction was, in fact, one that he himself proposed and voluntarily accepted. It was, moreover, reasonably related to keeping him on the job. I reject the notion that he had been singled out or picked on because of his union activity. He was observed visiting with other employees, and I do not believe he was seeking an inspector as he claimed, which he could have done by using the plant telephone. Paragraph 5(a) of Case 17-CA-9441 will be dismissed.

Subparagraphs (b) and (c) of paragraph 5 of Case 17-CA-9411 are similar and will be considered together. According to paragraph 5(b), as amended, both Leo Dodson and Wilmer Malotte forbade employees from displaying union insignias in their own work area. Paragraph 5(c) alleges that Dodson removed and destroyed union insignias displayed on employees' own personal belongings.

Robert Lendall's testimony sustained the allegations of paragraph 5(c). He testified that, unlike other employees, he had brought to the plant his own commercially purchased toolbox. He said he had put union stickers on his box about "everyday" but would find them removed the next morning. Then one afternoon in January 1980 he returned to the plant after his shift was over and observed Dodson taking stickers off of his box.<sup>78</sup>

Respondent correctly summarizes the evidence with respect to the display of union insignias as showing that employees were permitted to wear union insignias; they were allowed to place such on their own personal toolboxes; but they were not allowed to place prounion or procompany stickers on company property. I am persuaded, however, that the Company was not as prompt about removing procompany stickers as it was in removing union stickers.<sup>79</sup>

Also, while the testimony that the General Counsel cites (Stout, Armstrong, Newton, Haynes, Roark, McDaniel, and Cobb) does not support the allegations of paragraph 5(b) as worded, I am persuaded that there was disparate enforcement of the rules dealing with the display of materials in the plant as both the General Counsel and the Union contend. I am also persuaded, and find, that such disparate treatment is sufficiently within the allegations of paragraph 5(b). Such disparate treatment was not limited to allowing procompany stickers to remain on company property for a longer period. It is

apparent from the testimony of Messersmith and Frazier that other nonwork-related materials, such as calendars and pinups, were allowed to be publicly posted (i.e., not simply allowed to remain inside of toolboxes or lockers) on company property whereas union materials were not. The discriminatory restriction as to the display of union insignias and the discriminatory removal of union insignias violated Section 8(a)(1). See *Marathon LeTourneau Company, Longview Division*, 256 NLRB 350 (1981).

I find paragraph 5(d) in Case 17-CA-9441 was sustained. Plant Manager Frazier in his speech to Halliburton employees on January 8, 1980, indicated layoffs were in prospect if they selected the Union as their bargaining representatives. Said Frazier (G.C. Exh. 4):

It has been Halliburton's tradition to move employees around in our plant to accommodate the workload as it may rise and fall in certain areas. To us, this is much better than having to lay off employees and take away their paychecks.

Frazier had indicated earlier in his speech that if a union were present it could "necessitate our having to lay off employees rather than move them temporarily."<sup>80</sup>

I find paragraph 5(e) of Case 17-CA-9441, which alleges Bob Smith on January 21, 1980, inflicted bodily injury upon an employee because of his support of and sympathy for the Union, was not established. For proof of this charge, the General Counsel relies on the testimony of Carl Haynes and Ed Jones whose testimony was contradicted by Smith and his wife. I credit the testimony that Smith gave, corroborated by his wife, that he did not grab Haynes by the neck near the guard office at the time of the shift change on the afternoon of January 21, or at any other time, and did not disparage the union literature that was being handed out at that time. No doubt Smith was physically able, with his right hand but not his left, to bend Haynes over, but I am unable to find on the record that it occurred. There would have been other witnesses to the incident if it had occurred as Haynes and Jones reported, but none were presented. Gail Jones, who was evidently on guard at the time, knew nothing about the assault on Haynes.

The allegations of subparagraphs (f) and (g) of paragraph 5 of Case 17-CA-9441 are dependent upon the credibility of Sylvester Herring and Personnel Manager Messersmith. The complaint alleges that Messersmith on January 9, 1980, told an employee that (1) it would be futile for the employees to select the Union as their bargaining representative as the Company did not have to negotiate, and (2) the plant could close if the employees chose the Union as their bargaining representative. Her-

<sup>78</sup> Respondent does not dispute this testimony and stresses the (irrelevant) fact that Lendall acknowledged that he did not know if Dodson knew it was Lendall's personal box or not. Dodson conceded that he required the removal of insignias from company boxes and that he had removed them himself. Dodson did not deny removing stickers from a personally owned box of Lendall.

<sup>79</sup> See the testimony of Charles Roark and David Newton. Respondent correctly states that the source of the "Halliburton Love it or Leave it" stickers was not established.

<sup>80</sup> I believe Personnel Manager Messersmith and Shop Foreman Carter must have conveyed the same message to employees, although such findings are cumulative and unnecessary. (Ed Jones and Carl Haynes testified as to statements made by Messersmith, and Mary Luke testified as to Carter.) Messersmith testified that he had not indicated to employees in his information meeting that there would be any change in assigning personnel in the event of a slowdown, but this does not comport with the "Q and A" materials used in such meetings (Union Exhs. 10). Carter was not questioned about Luke's testimony.



ring testified that an exchange occurred between him and Messersmith on January 9, 1980, as follows:

I spoke to Mr. Messersmith and I said, "Mr. Messersmith, I would like to know why you are all denying me my workman's comp money from me being off injured." And Mr. Messersmith said, "We are not going to pay that money because you don't have a dock sheet out." I told him, "Yes, I do." And I said, "Mr. Messersmith, this is one reason why I am organizing trying to put a union in here." "Sylvester," he said, "I don't give a damn whether the union gets in here or not because we don't have to negotiate. And there is a possibility that the plant may close or move." And I stated to him that they had federal laws upon negotiating in good faith.

Messersmith denied ever telling Herring or any employee that there was a possibility that the plant would close or move. Messersmith also denied telling Herring that the Company would not have to negotiate with the Union if it came into the plant.

I am unable to believe that Messersmith would have made such a comment to the Union's admittedly "chief in-plant organizing committee member" at the height of second organizing campaign unless he had lost his composure, an unlikely event, I believe.<sup>81</sup> Subparagraphs (f) and (g) will be dismissed.

The General Counsel relies on the testimony of Daniel Webber as proof that Don Spencer created "an impression of surveillance and additionally restrained employees from assisting the union." Webber's testimony does not establish the allegation of paragraph 5(h) of Case 17-CA-9441, the relevant charge. Webber stated that on a day in October 1979 when he was acting as a floorwalker, a temporary supervisory position, his superior, Don Spencer, remarked to him "that it didn't look right for someone walking the floor to be seen talking with Sylvester Herring."

Spencer testified credibly that he had told Herring, who was assigned to work in a different area, not to interfere with his people. Spencer acknowledged speaking to Webber about visiting with Herring. He said he told Webber that he should not be talking with Herring as he should "set an example there in the shop."

Barbara Stewart's testimony is relevant to this charge, but it does not sustain paragraph 1(h) either. She said Spencer spoke to her as follows in December 1979:

He called me in and stated tht he wished that I would not be talking to Sylvester Herring and he didn't mention any subject or specify any time or

work area. He just stated that he wished that I wouldn't talk to Sylvester Herring.

Such response impressed me as too pat to be credible or coercive. Steward was hostile to the Company, possibly due to the fact that it had discharged her husband. On cross-examination she said she volunteered to Spencer on the occasion in question that when talking to Herring she did not always talk about the Union and that Spencer then "just said that he wished that I wouldn't stand around and talk to Sylvester Herring." She added that Spencer's comment to her had no effect on her talking to Herring.

I credit Marie O'Connell's testimony that in response to an inquiry made of her in January 1981 by her supervisor, Bob Smith, as to how the "girls" were going to vote she told him that she was going to vote for the Union. Such testimony sustained paragraph 5(i) of Case 17-CA-9441, which alleges that Bob Smith interrogated an employee concerning the employee's union sentiments and the sentiments of fellow employees. On direct examination by Respondent, Smith denied making the inquiry. Later on cross-examination he explained he did not "directly" recall conversing with O'Connell about the Union but conceded that he would have "if she asked me questions, yes."<sup>82</sup>

#### B. The R Case

As has been indicated, 21 of the Union's objections are before me for determination. The Union argues that Halliburton's conduct, including the unfair labor practices alleged, during the critical period before the election,<sup>83</sup> resulted in the Union's loss of its claimed majority status. It contends that the "overall antiunion campaign" had a sufficient impact as to require the holding of a rerun election. It will be noted that many of the objections are also alleged as unfair labor practice charges which have been previously discussed.

Objection 1 asserts that Halliburton representatives created acts of surveillance on January 21-24 and 30, 1980.

The Union relies on the testimony of employees who testified that they observed certain Halliburton officials in the guardroom while handbilling at the plant's entrance. Respondent makes the point that it was the Union which chose to distribute literature on company property where it knew or should have known that management officials would be. This fact of course does not end the matter. While Respondent is correct in stating that the Union cannot require its officials to vacate the guardroom just because the Union wants to pass out literature in the area, the Union has not claimed such a right.

The testimony of Halliburton Officials Galey, Frazier, and Messersmith satisfies me that they were in the guard office for reasons other than to watch the distribution of union literature. I am satisfied that this was not true in the case of Shop Foreman Pete Robnett. A number of

<sup>81</sup> Witness Linda King testified that she thought the Company "would close down and move to Davis," but her explanation of the sources of her impression raised doubts as to whether such message could fairly be attributed to the Company. The passage in Frazier's speech which she referred to did not contain such a threat. Her former supervisor, John Boyd, whom she mentioned as another source, admitted that he had talked to her on one occasion at one time and that he would talk to any employee who would ask him "about what is going on." However, Boyd denied having any contact with her during the second organizing drive at which time she was working in another section.

<sup>82</sup> Charles Lair also testified that Wilmer Malotte had interrogated him about union activities.

<sup>83</sup> The petition for the second election was filed on December 3, 1979.



employees, including Vernon Stout, Sonny Armstrong, Fred McDaniels, Carl Haynes, and Robert Lendall, testified that Robnett watched them as they passed out the literature. Lendall testified that Robnett was in the guardroom each day he distributed literature. Said Lendall:

He would take the chair from behind the table and move it to the side of the table and sit there and watch us handbilling. He would see us from where he was sitting and we could see him.

Robnett, who was called early in the hearing by the General Counsel, never appeared to deny the testimony of the employee witnesses. Objection 1 was sustained, and, as indicated previously, the evidence in support of it showed a violation of Section 8(a)(1).<sup>84</sup>

Objection 2 was not sustained and apparently the Union concedes as much. The record does not show that Respondent on January 29, 1980, or at any other relevant time, forbade the distribution of union literature "during nonworking hours in nonworking areas."

Objections 3 and 5 are similar and will be considered together as the Union does in its main brief (p. 6). These objections assert that Respondent treated known prounion employees and those who were known to be antiunion in a disparate manner—allowing the latter to move about the plant and talk to employees during work hours while denying the same privileges to prounion employees.

The Union relies on the evidence pertaining to the treatment of Herring and the evidence pertaining to the display of union insignias (subpars. (b) and (c) of par. 5 of the complaint in Case 17-CA-9441). The allegations and evidence dealing with the display of insignias, while concerned with disparate treatment, in no way pertain to employees talking or moving about the plant during working hours and are not relevant to these objections.

Much of the evidence on which the Union relies to support these two objections relate to the treatment of Herring, who as I have previously found, was properly disciplined and without regard to his union activities. As Respondent states, the Company was within its rights in requiring its employees to work during worktime. See *Republic Aviation Corporation v. N.L.R.B.*, 324 U.S. 793 (1945); *N.L.R.B. v. The Babcock & Wilcox Company*, 351 U.S. 105 (1956); and *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962). See also *Stone & Webster Engineering Corp.*, 220 NLRB 905 (1975). Obviously Herring did not appreciate this fact as was the case with respect to Thomas and McDaniels. The Company could lawfully forbid organizing—or any activity other than work—during worktime, and it is not to be faulted for requiring Herring and any other employee to cease it and return to his area and resume work. The record does not suggest that there was any restriction on employees' discussion or movements when they were at lunch or on break.

<sup>84</sup> The testimony of guard Sweetan, cited by Respondent, that he did not observe Robnett sit and watch the handbilling during the relevant week was insufficient to contradict all of the employees' testimony. The Union indicates that the Company tried to undermine the Union's handbilling by placing "extra trash barrels . . . close to the point of distribution," but I reject this notion.

There was evidence, contrary to what Respondent suggests in its brief (p. 74), that antiunion employees were excused from working or otherwise preferentially treated over those who favored the Union. Some of the evidence was credible.

The testimony of Fred McDaniels does not convince me that Paul Hymer, whatever his sentiments might have been about the Union, was more favorably treated than McDaniels, because it was known that Hymer was opposed to the Union. It was entirely proper for the Company to stop McDaniels from distributing union pencils on company time; it was not shown that Respondent knew Hymer was distributing gloves or any merchandise in favor of the Company or in opposition to the Union.

On the other hand, the testimony of Robert Lendall satisfied me that he was disparately treated during the second election campaign because of his support of the Union. Lendall was a member of the organizing committee, wore union insignias, and distributed union literature outside of the guard office while Shop Foreman Pete Robnett looked on. There is nothing in the record to suggest that Lendall presented any disciplinary problem, yet his foreman, Leo Dodson, watched him very carefully. Said Lendall:

He "bird-dogged me" until about two days before the election. It seemed like everytime I turned around he was right there.

While Dodson maintained that he treated all employees the same, he agreed that he had heard that there were complaints that he had been bird-dogging Lendall, as well as Herring and Fred McDaniels.<sup>85</sup> I conclude that Dodson's disparate treatment of Lendall was a result of his union activity. In any event, Respondent did not establish that there was any other reason for carefully watching Lendall. See *Wright Line, supra*. Such conduct sustains Objections 3 and 5 and also is a violation of the Act.<sup>86</sup>

I reject Sonny Armstrong's testimony, relied on by the Union, as proof that he was more restricted than other tow motor drivers. His foreman, Raymond Sharp, credibly testified that Armstrong was restricted only "to do his job" and that Armstrong chose to stay in work areas to visit rather than to return to his waiting station.

The testimony of other employee witnesses relied on by the Union concerned treatment of Herring and did not establish disparate or unlawful treatment with respect to him moving about the plant and talking with others during working hours. The special and necessary disciplinary measures taken to keep Herring on the job have been previously discussed.

<sup>85</sup> Lendall claimed there was preferential treatment of Sue Hickman, whom Lendall identified as antiunion. According to Lendall, Dodson observed Hickman talking to other employees and took no steps to interfere. Dodson, however, denied knowing Hickman's sentiments about the Union, and stated that he did not discipline employees for talking during worktime. "[T]hey could be talking about the units . . ."

<sup>86</sup> Respondent's counsel pointed out during the hearing that "bird-dogging" is not specifically charged in the complaint. I consider the evidence to be within the allegations of par. 5(b) of the complaint in Case 17-CA-9204, and par. 5(h) of Case 17-CA-9441.

The testimony of Ed Jones that Foreman Amann had marked on a union handbill in the presence of two employees (Cox and Lochner, and presumably himself) did not establish a violation of the Act or sustain Objection 4. Jones said he picked up the marked handbill and took it to the union hall, but it was not produced at the hearing. The testimony of Jones, relied on by the Union, was:

He had a handbill that we had passed out that day and it had different types of questions on it, like, do you need higher wages, or something of that sort, and he was marking out stuff and then adding like, do you need union bosses, and stuff like that.

The Union relies on the speech Plant Manager Frazier delivered on January 8 (not January 16, 1980) as proof of Objections 6 and 7. The speech contains the threat referred to in Objection 7, as previously stated in discussion paragraph 5(d) of Case 17-CA-9441, but not the one asserted in Objection 6. Thus, Objection 7 was sustained, and Objection 6 was not.

Objection 8, which is a restatement of the allegations of paragraph 5(e) of Case 17-CA-9441, was not sustained as previously indicated in discussing that charge.

For proof of Objection 9, the Union cites the testimony of Herring that he was not allowed to question Plant Manager Frazier during the meeting held on January 28, 1980, when he delivered a preelection speech to employees. The record indicates that the Union had adequate opportunity to give its message to Respondent's employees before the election and that Frazier was not bound to allow Herring to undertake to speak on behalf of the Union. See *N.L.R.B. v. United Steelworkers of America, CIO [Nutone, Incorporated]*, 357 U.S. 357 (1958); also *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966). Accordingly, I find Objection 9 was not sustained.

The first paragraph of page 17 of Plant Manager Frazier's January 28, 1980, speech is within the protection of Section 8(c) of the Act and does not provide a basis for Objection 10, as the Union contends.

The passages in Frazier's and Messersmith's speeches (Union Exh. 2, p. 9; Union Exh. 3, p. 4), referred to by the Union as supporting its Objection 11, are also within the protection of Section 8(c). Although Section 302 of the Act allows a dues checkoff only as authorized by law and when the checkoff is specifically authorized by an employee, a preelection misstatement that the Union, if selected, could be expected to seek a checkoff of *finer*, along dues, assessment, or other fees, and that such checkoff would be legal, hardly gives rise to a violation of the Act or a valid objection. Obviously company officials believed such a checkoff could be legally negotiated. The thrust of the message conveyed by the cited speeches was not that the Union could, or would, be seeking an unlawful checkoff as the Union suggests.

For proof of Objection 12, the Union relies on the testimony of Sonny Armstrong indicating that Foreman Ray Sharp had asked him, when the two were alone, if he could stand the heat after building a fire. According to Armstrong, Sharp was referring to the fact that an NLRB charge filed by Armstrong had been dismissed and the notice of its dismissal had been posted on a bulletin board.

It has not been alleged that the conduct referred to in this objection involved an unfair labor practice. The Company had a right to post the dismissal notice, and I am unable to find that Sharp's conversation with Armstrong interfered with the election or involved a violation of the Act, *Albertson's Inc.*, 243 NLRB 362 (1979).

Question 13 refers to the same conduct alleged in subparagraphs (f) and (g) of paragraph 5 of Case 17-CA-9441, and, as previously stated, was not sustained.

Objection 14 is predicated on the testimony of Ed Jones, who testified that a guard named "Virgil" showed him a list of three union officials (Downing, Malotte, and Ducey); asked him to identify them "when the three come through"; and referred to the officials as "the three most-wanted at Halliburton." Jones' testimony on its face does not really support the allegations of the objection, which asserts that the "Employer on or about January 23, 1980, put out a three (3) most-wanted list" naming the officials and that the guard, after showing the list to employees, "told them he was instructed to bring the three (3) in if he found them." The list (Resp. Exh. 63) was not a "most-wanted list" at all, as Messersmith pointed out, and Virgil Malone, the guard on duty, denied ever discussing the list with Ed Jones. Objection 14 was not sustained.

The Union does not urge that the evidence shows that employees of the paint sandblast, and final assembly departments were called together and told not to communicate with Herring, a known union supporter. In any event, Objection 15 was not sustained.

Objection 16 was sustained by the evidence that established paragraph 5(i) of the complaint in Case 17-CA-9441.

Objection 17 is predicated on discredited testimony of Herring (see discussion of par. 5(f) and (g) of the complaint in Case 17-CA-9441) and was not sustained.

Objection 19 refers to the warning issued to Barbara Moore, previously considered in the discussion of paragraph 6 of the complaint in Case 17-CA-9441. It was not sustained.

Objection 20 was not sustained. The objection refers to Fred McDaniels' claim for sick leave. The Company was justified in denying such pay for a day (January 28, not January 23, 1980, as alleged) on which McDaniels admittedly called in late. The fact that the Company determined that sick pay would not be paid until Thursday after the election and had told him that prior to the election when he made the inquiry was no significance. The record indicates that sick pay was determined on Thursday as a regular procedure.

Asserting that "the above acts" of Respondent had depleted the Union's majority and precludes the holding of a fair election, Objection 21 specifically requests that a bargaining order be issued. The Union has abandoned this objection, however, and requests that a rerun election be held on a neutral location off of Respondent's premises.

The record establishes that Respondent during the critical period violated the Act by creating the impression that it was engaging in surveillance of employees'

protected concerted activities; by threatening employees with less favorable layoff or transfer policies if the Union were selected; by interrogating employees concerning the union sentiments of fellow employees; by removing and destroying union insignias displayed on employees' personal belongings; and by allowing antiunion and non-work-related materials to remain posted on a preferential basis. Such conduct unquestionably warrants setting aside of the January 30, 1980, election and directing of a new election. See *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (1962); also *Evans Brothers, Barber & Beauty Salons, Inc.*, 256 NLRB 121 (1981).

I recommend that the election be held at such time and place as the Regional Director deems appropriate, as counsel for the General Counsel suggests. It is evident that the Union's request for an election off of the Halliburton's premises was not timely made. None of the Union's objections specifically requested an election away from the Company's plant. The Union challenged the propriety of holding an election in certain areas of the plant (i.e., the electronics room and in the same building where "an all captive audience meeting was held"), but these objections (22 and 26) are not before me.

It is not being suggested that a rerun election should be conducted on Respondent's premises. That determination is best left, as the General Counsel points out, to the discretion of the Regional Director as the Board had occasion to state in *J. P. Stevens & Co., Inc.*, 167 NLRB 266 (1967). The Board is well aware of factors that unfairly affect voters' behavior and has devised procedures to provide the "laboratory conditions" necessary for a fair election. Further, the Union's evidence does not provide a basis for making any change in the Board's policy statement set forth in Section 11302.2 in its Casehandling Manual Proceedings, which reads:

The best place to hold an election from the standpoint of accessibility to voters, is somewhere on the employer's premises. In the absence of good cause to the contrary, the election should be held there.

Upon the foregoing findings of fact, and upon the entire record in the proceeding, I make the following:

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By creating an impression of surveillance of employees' union activities, by threatening employees with layoffs if they select the Union as their bargaining representative, by interrogating employees concerning employees' union sympathies, by discriminatorily restricting the display of union insignias in work areas, and by removing union insignias displayed on employees' personal belongings, Respondent has violated Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. It was not established that Respondent violated the Act in any other manner.

#### THE REMEDY

Having found that Respondent engaged in certain unfair labor practices in violation of Section 8(a)(1) of the Act, I find that it is necessary that Respondent be ordered to cease and desist from the unfair labor practices found and from any like or related acts which infringe upon employees' Section 7 rights, and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>87</sup>

The Respondent, Halliburton Services, a Division of Halliburton Company, Coffeyville, Kansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Creating among employees the impression that their union activities are under surveillance.
- (b) Threatening employees with layoffs if they select the Union as their bargaining representative.
- (c) Interrogating employees concerning their union sentiments.
- (d) Discriminatorily restricting the posting or distribution of union literature in work areas.
- (e) Removing union insignias displayed on an employee's personal belongs.
- (f) In any like or related manner interfering with, coercing, or restraining employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

- (a) Post at its premises in Coffeyville, Kansas, copies of the attached notice marked "Appendix."<sup>88</sup> Copies of the said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.
- (b) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that Case 17-RC-8929 be severed from Cases 17-CA-9204, 17-CA-9441, and

<sup>87</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>88</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

17-CA-9603, and that Case 17-RC-8929 be returned to the Regional Director for Region 17 for the purpose of holding a new election as soon as feasible, under the supervision of the Regional Director for Region 17, and at such time and place as the Regional Director deems circumstances afford a free choice of any bargaining representative.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT engage in surveillance of employees' union activities or create the impression that we are doing so.

WE WILL NOT threaten employees with layoffs if they select the Union as their bargaining representative.

WE WILL NOT interrogate our employees concerning their union membership, activities, or sympathies.

WE WILL NOT remove union insignias from employees' personal belongings, and will not discriminatorily restrict the display of union insignias in work areas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

HALLIBURTON SERVICES (COFFEYVILLE,  
KANSAS), A DIVISION OF HALLIBURTON  
COMPANY